No. 84-861 (7)

IN THE

Supreme Court of the United States

OCTOBER TERM 1984

NATIONAL LABOR RELATIONS BOARD,

Petitioner

and

HOUFF TRANSFER, INC., *ET AL.*,

Respondents

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *ET AL.*,

Respondents

On Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

BRIEF FOR RESPONDENT HOUFF TRANSFER, INC. IN SUPPORT OF THE PETITIONER

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QUESTION PRESENTED

Having acknowledged the fact that certain of the longshoremen's traditional cargo-handling work has been rendered "unnecessary" -- could the Court below then properly conclude that the ILA had a lawful work-preservation purpose in enforcing a claim to functionally distinct cargo-handling work that prior to "containerization" had always been performed by motor-carrier employees after the longshoremen had completed their now eliminated traditional work?

PARTIES TO THE PROCEEDING

The decision of the Court of Appeals was issued in four consolidated cases seeking review or enforcement of decisions of the National Labor Relations Board. The Board was the petitioner in one of these cases and a respondent in the other three. In Case No. 83-1486 below, Houff Transfer, Inc.[1] was an intervenor whose interests were aligned with the Board's. The International Longshoremen's Association, AFL-CIO (ILA) appeared as petitioner in one of the consolidated cases, intervenor in another, and respondent in the other two; also appearing as petitioner, intervenor, and respondent was the Council of North Atlantic Shipping Associations. Additional respondents were

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[1] In compliance with Rule 28.1, according to information supplied to counsel of record for Houff Transfer, Inc., it has no parent companies, subsidiaries, or affiliated corporations.

the ILA Hampton Roads District Council; the ILA Atlantic Coast District Council; the ILA District Council, Baltimore, Maryland; ILA Locals 333, 846, 862, 921, 953, 970, 1248, 1355, 1416, 1416-A, 1429, 1458, 1526, 1526-A, 1624, 1680, 1736, 1783, 1784, 1819, 1840, 1922, and 1970, AFL-CIO; the Hampton Roads Shipping Association; Southeast Florida Employers Port Association; Coordinated Caribbean Transport, Inc.; Chester, Blackburn & Roder, Inc.; Eagle, Inc.; Eller & Company, Inc.; Harrington & Company, Inc.; Strachen Shipping Company; and Marine Terminals, Inc. American Trucking Associations, Inc., Tidewater Motor Truck Association, and the New York Shipping Association appeared as petitioners and intervenors below. The International Association of NVOCCs, Florida Custom Brokers and Forwarders Association, Inc., Twin Express, Inc., and International Container Express, Inc., were petitioners

below. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America; the American Warehousemen's Association; and San Juan Freight Forwarders, Inc., also were intervenors below. Under Rule 19.6 of the Rules of this Court, all of these parties except the Board are respondents in this Court.

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BRIEF FOR RESPONDENT HOUFF TRANSFER, INC. IN SUPPORT OF THE PETITIONER

OPINIONS BELOW

The Opinion of the Court of Appeals is reported at 734 F. 2d 966 and may be found in the Joint Appendices To Petitions previously filed in this Court at pages 1-30.[2] The Decision and Order of the National Labor Relations Board in **International Longshoremen's Ass'n. (Dolphin Forwarding, Inc.), (Dolphin II)** is reported at 266 NLRB 230 (1983) and also may be found in said Joint Appendices at pages 35-64.

JURISDICTION

The Judgment of the Court of Appeals was entered on May 9, 1984 (Jt. Apps. to Pets. at 3 and 30). Petitions for Rehearing

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[2]The various petitioners in Nos. 84-677, 684, 691, and 696 joined in the preparation of said Joint Appendices.

and Suggestions for Rehearing En Banc, timely filed by Houff Transfer, Inc. and other parties, were denied by the Court of Appeals on July 31, 1984 (Jt. Apps. to Pets. at 31-34). The Petition herein[3] was filed on November 28, 1984, and was granted by Order of this Court filed January 21, 1985 (A. 261). The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act (29 U.S.C. §151 et seq.) (NLRA) are as follows:

Section 8(b), 29 U.S.C. §158(b), provides in pertinent part:

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[3]Houff Transfer, Inc., a charging party in the Board proceedings and an intervenor in the Court of Appeals, also filed a petition (No. 84-869) on November 28, 1984.

> It shall be an unfair labor practice for a labor organization or its agents --
>
> 4(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where ... an object thereof is:
>
> * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person ... **Provided**, That nothing contained in this clause (B) shall be construed to make unlawful ... any primary strike, or primary picketing;....

Section 8(e), 29 U.S.C. §158(e), provides in pertinent part:

> It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such

an agreement shall be to such extent unenforceable and void....

STATEMENT OF THE CASE

In these consolidated cases, the ultimate issue addressed by the Administrative Law Judge and the National Labor Relations Board was whether and to what extent Rules on Containers promulgated by the ILA and the Shipping Associations, but having a devastating impact upon other employers and their employees, legitimately sought to preserve to ILA laborers certain cargo-handling work traditionally and historically performed by them.

In the **Associated Transport** cases, in which Houff Transfer, Inc. was a charging party, it was alleged that the ILA and Council of North Atlantic Shipping Associations ("CONASA") were engaging in violations of

Section 8(e)[4] of the National Labor Relations Act (hereinafter the "Act"), by agreeing to cease doing business with motor-carrier employers whose employees continued to engage in their traditional work of handling freight in preparation for its over-the-road transportation. Houff and the other charging parties also filed separate charges alleging that the ILA was engaging in violations of Section 8(b)(4)(ii)(B)[5] of the Act,

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[4] 29 U.S.C. §158(e) (1976). These charges were that ILA and CONASA agreed: To cease and refrain from -- and they did cease and refrain from -- handling, transporting or otherwise dealing in freight moving to and from the charging parties; and further to cease doing business -- and they did cease doing business -- with the charging parties.

[5] 29 U.S.C. §158(b)(4)(ii)(B) (1976). The labor organization was charged with threatening, coercing and restraining vessel-owner employers with an object of forcing them: To cease handling, transporting or otherwise dealing in freight moving to and from the charging parties; and to cease doing business with the charging parties.

by enforcing the above-described agreement between CONASA and the ILA.

The Administrative Law Judge and the Board found and concluded that the Rules, in pertinent part, unlawfully sought to acquire for ILA laborers certain cargo-handling work traditionally and historically performed by motor-carrier employees; and that such employees' work always had been and is functionally distinct from eliminated cargo-handling work formerly performed by ILA laborers. The Circuit Court, however, refused to enforce these **Associated Transport** rulings.

Houff Transfer deems the Board's statement of the case to be a sufficient narrative of the procedural history of, and the substantive rulings in, these consolidated cases. It is the purpose of this statement of the case to invite the Court's attention to certain indisputable facts that Houff believes to be most pertinent. Houff

also suggests that the Board has cited and argued the pertinent authorities. Accordingly, Houff will offer limited arguments that the Court of Appeals has drawn logically incorrect and legally impermissible inferences from the following facts, which are clearly supported by substantial evidence:

ILA laborers traditionally handled ocean-going cargo only at the piers, moving and placing packages, cartons, crates, boxes and other containers, of various sizes and descriptions, on and off ships (Jt. Apps. to Pets. at 105-107).

About twenty-five years ago, the owners of ocean-going vessels began to develop their use of significantly larger containers, usually between twenty and forty feet in length. Cargo was loaded or "stuffed" into these larger "trailer-containers", which could be loaded on and off ships without loading and unloading the

individual cargo items. As the handling of "containerized" cargo continued to develop, ships were fitted for carrying large numbers of trailer-containers which were loaded on and off ships by cranes. These containers were designed so that they could be hooked onto a power unit for motor-carrier transportation in the ordinary tractor-trailer configuration (Jt. Apps. to Pets. at 93-96).

Prior to the shipping companies' utilization of "trailer-containers", and prior to the advent of "containerization" in the maritime industry, motor-carrier employees picked up import cargo at the piers with **local** equipment (A. 25-26). Motor-carrier freight handlers then reloaded the cargo, with other freight, onto motor-carrier equipment in preparation for over-the-road transportation (A. 26-27). With respect to export cargo, motor-carrier employees transported such cargo and other freight to the

trucking terminal in the port city, for reloading into local equipment in which the ocean-going cargo was taken to the piers (A. 24; Jt. Apps. to Pets. at 136-137).

The handling of **FSL cargo** -- that is, a single shipper's cargo housed in an export container or a single recipient's cargo housed in an import container -- also has been performed by motor-carrier employees in connection with over-the-road transportation of the cargo (A. 25-29; Jt. Apps. to Pets. at 132-137). The FSL container became the "**local**" trailer or was used instead of the "**local**" truck.

The cargo-handling work at the trucking terminal always has been and remains necessary in the conduct of surface-transportation operations (A. 25-29; Jt. Apps. to Pets. at 132-137). This work always has been performed by motor-carrier employees in the ordinary course of their daily duties,

both before and after "containerization", and never has been performed by longshoremen (A. 27-28; Jt. Apps. to Pets. at 133-137). "Containerization" did not eliminate the previously-existing necessity that import and export cargoes frequently be reloaded at port-city trucking terminals in the usual and ordinary conduct of surface-transportation operations (A. 27-28; Jt. Apps. to Pets. at 133 and 136). **"Trailer-containers" were interchanged in the surface transportation industry, prior to "containerization" in the maritime industry, and motor carriers always have unloaded and reloaded freight housed in their own trailers and in other owners' containers** (A. 28; Jt. Apps. to Pets. at 134).

The facts could not support any conclusion, and the Court of Appeals has not concluded, that "containerization" in the maritime industry created any new work of

reloading cargo in connection with its over-the-road transportation **or that any of the longshoremen's former work was displaced. Exactly to the contrary, the Circuit Court Opinion specifies that the longshoremen's former work has been eliminated** (Jt. Apps. to Pets. at 27).

Indeed, the Opinion below apparently concedes that all of the foregoing facts are supported by substantial evidence. In fact, the Court below summarized these facts as follows:

> "Prior to containerization, both the longshoremen and the truckers handled the break-bulk cargo as it moved from the ship to the consignee. Longshoremen would perform the initial unloading of the ship, moving the cargo piece by piece to the local seaport terminal. From there, truckers usually hauled the cargo to their own terminal or freight station, where they would reload it into their over-the-road equipment. With containerization, the off-pier work of the

> shortstopping[6] truckers remains essentially unchanged except that they unload cargo from containers instead of from motor trucks. **And with containerization, of course, the work formerly performed by the longshoremen has been rendered unnecessary because the container can be fastened to the chassis of a truck and transported intact to the trucking terminal or freight station."** [Emphasis added.] (Jt. Apps. to Pets. at 27).

Turning to the provisions of the Rules on Containers that are at issue upon the writ of certiorari, and their effects upon Houff Transfer, the ILA never asserted any work-jurisdiction claim affecting FSL containers or cargo until approximately fifteen years **after** the advent of "containerization". The ILA and CONASA, during 1973 and again during 1974, entered into totally

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[6]"Shortstopping" is a term that has **never** been employed in the surface-transportation industry. It is a "label" applied by the ILA and the Shipping Associations to motor carriers' local freight reloading operations that always have been performed both prior and subsequent to the utilization of containers in the maritime industry.

unprecedented agreements that their Rules on Containers would thereafter apply to FSL containers. Previously, the Rules and the ILA's claim of work jurisdiction had applied only to LTL or consolidated containers. In a 1973 "Dublin agreement", however, the Rules were "interpreted" by the ILA-CONASA Joint Committee on Containers to apply to FSL containers. Consistent with their new "interpretation", the ILA and CONASA purported to establish a new rule, restricting the handling of FSL cargo within fifty miles of the port to ILA laborers and to employees of the actual shippers and recipients of such cargo (Jt. Apps. to Pets. at 103).

The 1974 ILA-CONASA Agreement for the first time incorporated Rules provisions consistent with the 1973 "Dublin agreement". The 1974 Rules very clearly purported to apply to FSL containers (Jt. Apps. to Pets. at 103).

Pursuant to these unprecedented agreements, fines of One Thousand Dollars were imposed upon vessel owners for each and every container with respect to each infraction of the new rules provisions (Jt. Apps. to Pets. at 87-88). The ILA and Shipping Associations imposed such fines and caused cancellation of interchange agreements between vessel owners and motor carriers, specifically including Houff Transfer, who saw fit to continue their established practices of handling FSL cargo and other freight in the performance of their routine surface-transportation operations (A. 28, 205-207, 245-248; Jt. App. to Pets. at 176). The ILA and CONASA thereby caused vessel owners to cease giving freight to motor carriers whose employees continued to handle FSL cargo and to cease furnishing such motor carriers with containers (A. 245-248; Jt. Apps. to Pets. at 103).

After the "Dublin agreement" affecting FSL containers, Houff Transfer continued its practice of reloading FSL cargo at its trucking terminals. In early 1974, Houff picked up three FSL containers at the piers in Baltimore. Such containers, which were destined to points in Virginia and West Virginia, were transported by Houff to its Baltimore terminal and there unloaded by Houff's employees, who then reloaded the cargo into Houff's equipment. These particular containers were unloaded because they were unsafe and heavier than permitted by Virginia weight laws and in order to minimize the expenses of transporting the cargo on the highways. ILA representatives learned of Houff's actions and caused the vessel owners who had furnished the containers to Houff to be fined One Thousand Dollars in respect of each of the containers. When Houff refused to pay the vessel owners for

the ILA fines, the vessel owners cancelled interchange agreements with Houff and, by refusing to furnish containers to Houff, ceased doing business with it. As a result, Houff's opportunities to transport FSL cargo were drastically diminished (A. 28, 201-210, 245-248).

SUMMARY OF ARGUMENT

Clear and substantial evidence, on the record considered as a whole, inescapably dictated the Administrative Law Judge's and the Board's conclusions: (1) That the ILA and CONASA entered into an unlawful agreement to cease doing business with motor carriers; and (2) That the ILA illegally enforced said agreement. These conclusions were based upon specific findings that the ILA and CONASA had sought to claim for ILA laborers certain cargo-handling work that always had been performed by motor-carrier employees and that was functionally

unrelated to eliminated cargo-handling work formerly performed by ILA laborers. The Circuit Court decidedly has **not** concluded that these findings are "clearly erroneous".

The Board's conclusions might have been avoided **only** if substantial evidence had supported precisely opposite findings that the work of handling freight in connection with and in preparation for its over-the-road transportation, in circumstances dictated by motor-carrier operations, economics, and convenience, had once been work performed only by longshoremen or is work that is functionally equivalent to work formerly performed by longshoremen. Substantial evidence supporting such findings might have led to conclusions that the ILA's and CONASA's otherwise unlawful acts fall within a judicially defined, narrow "work-preservation" exception to the provisions of Sections 8(b)(4)and 8(e) of the Act.

The indisputable facts acknowledged by the Court of Appeals cannot support any conclusion that the 1973 and 1974 alterations to the ILA-CONASA Rules on Containers were directed to and affected **only** work which was traditional work of longshoremen, because such alterations purported to limit **any** port-area handling of FSL cargo to ILA laborers and to the cargo shippers' and recipients' employees, **whether or not** such handling was functionally related to traditional longshoremen's work.

As fully established by the record in this case, ILA laborers had **never** engaged in the cargo handling at issue, nor in any functionally equivalent cargo handling. Rather, the record indisputably establishes that motor-carrier employees have **always** engaged in handling FSL cargo **and** other freight in connection with and in preparation for its over-the-road transportation,

in circumstances dictated by the convenience and the operational and economic needs of motor-carrier employers. Such work is in no respect functionally equivalent to, or even in any way related to, the now eliminated work formerly performed by ILA laborers.

ARGUMENT

The ILA Could Not Have Had a Lawful Work-Preservation Purpose in Enforcing a Claim to Functionally Distinct Cargo-Handling Work That Prior to "Containerization" Had Always Been Performed by Motor-Carrier Employees After the Longshoremen Had Completed Their Now Eliminated Traditional Work

Clear and substantial evidence fully supports the detailed facts found by the Administrative Law Judge and affirmed by the Board. As previously noted, the Circuit Court has not concluded that any of those findings of fact are "clearly erroneous". Indeed, as quoted at pages 11-12 of this Brief, the Court of Appeals approvingly

summarized the findings of facts (Jt. Apps. to Pets. at 27).

Upon these specific, detailed findings of facts, however, the Court below concluded:

> "From these unassailable facts, the Board concluded that the ILA's attempt to preserve under the Rules loading and unloading of cargo constitutes 'unlawful work acquisition'. But the Board conspicuously failed to ground this conclusion of law in **the only finding of fact** that might support it: that the Rules, in preserving for ILA members the right to do this initial loading and unloading, somehow deprive the truckers and warehousemen of **their** [emphasis in original] off-pier work by transferring all **or some of it** to longshoremen at the pier.... [O]ne cannot possibly maintain that the stripping of import containers at the pier would in any way prevent the identical off-pier work." [Emphasis added.] (Jt. Apps. to Pets. at 27-28).

Exactly contrary to the above-quoted conclusion, **other** indisputable facts of record, established by clear and substantial evidence, fully support the Administrative Law Judge's and the Board's ultimate

conclusions in the **Associated Transport** cases. Such facts, summarized below, were unheeded by the Circuit Court.

The indisputable facts are that the Rules on Containers never have provided that any FSL containers are to be unloaded by ILA laborers at the piers; what the Rules changes in 1973 and 1974 did specify was that such container loads could initially be handled within fifty miles of the piers only by ILA laborers or by employees of the cargo shippers or cargo recipients; that is, if motor carriers elected for their own operational reasons to reload such freight at their trucking terminals, as they always had done, such freight-handling was specified to be a Rules violation. Stated another way, the Rules purported to say that **only** ILA laborers or employees of the cargo shippers or recipients could engage in the initial cargo-handling in the port area, regardless of

whether the cargo-handling was functionally related to pier operations or to surface-transportation operations.

It is emphasized that for approximately fifteen years **after** the advent of "containerization", the Rules made no work-jurisdiction claim to **any** FSL cargo-handling. **And even the new 1973 and 1974 Rules permitted the initial loading and unloading of FSL cargo by employees of the cargo shippers or recipients, but then purported to forbid any such cargo-handling by motor-carrier employees.** At least to this extent, the ILA and CONASA have tacitly acknowledged that longshoremen cannot fairly claim, and they have not claimed, that **any** initial loading or unloading of FSL cargo in the port area is "equivalent" to the loading or unloading of ships.

The Rules' claim (after 1973) is that ILA laborers are entitled to accomplish the

work of unloading and reloading FSL containers only if and when the motor carrier, for its own reasons, elects for the cargo to be transferred to its own trailer. If a motor carrier does **elect**, for its own reasons, to have the container cargo reloaded onto **its** trailer, and such reloading is to be done by ILA laborers at the pier, it would be economic folly, if avoidable, to again reload the freight onto yet another motor-carrier trailer at the trucking terminal. Motor carriers undeniably would, at the least, **attempt** to cause their over-the-road drivers and equipment to pick up the unloaded container cargo at the piers. This necessarily would result in lost work opportunities, not only fo the motor-carrier freight handlers, but also for local drivers.

Thus, if the Rules provisions in question are to be enforced, substantially more reloading necessarily will be done at the

piers and will not necessarily be duplicated at the trucking terminals, and the motor-carrier freight handlers' work will be taken from them, even though the work is necessary or convenient, and traditionally had been performed before "containerization", because of surface-transportation operational considerations.

The 1973 and 1974 Rules changes have not continuously deprived motor-carrier freight handlers of <u>their</u> traditional work <u>only</u> because such Rules changes have either been enjoined or unenforced during most of the years since their promulgation. It would be one thing for the ILA to claim the right to unload all FSL containers at the piers; reloading at trucking terminals, in such event, would continue to be necessary and desirable in similar circumstances to those which dictated such reloading prior to "containerization" in the maritime industry.

But the Rules' claim, in effect, is that ILA laborers shall perform not the equivalent of the pier work formerly performed by longshoremen but the exact surface-transportation work formerly performed by motor-carrier employees.

By the same process, the ILA could assert that longshoremen are entitled to claim and acquire all of the initial FSL cargo handling in the port areas. The Court of Appeals' analysis in this case more correctly would support a claim that the employees of the cargo shippers and recipients could not load or unload FSL containers in the port areas. Because such employees would still, presumably, load or unload cargo onto or from trucks at their employers' places of business, they also presumably would not lose any work opportunities. But it cannot be gainsaid that this broader claim, like the claim at issue in this case, would have

a devastating impact upon the shipping and surface-transportation industries.

As distinguished from the circumstances potentially affecting employees of the cargo shippers and recipients, however, it is emphasized that motor-carrier freight handlers necessarily will lose work opportunities if ILA laborers are allowed to acquire functionally distinct work that has been and is convenient or necessary **because** of the exigencies of surface-transportation operations.

All of these incontrovertible factual circumstances unassailably support the Administrative Law Judge's and the Board's "unlawful work acquisition" conclusions, and the Court of Appeals should have enforced the Board's ruling.

CONCLUSION

Upon all of the foregoing, Houff Transfer, Inc. respectfully prays that the

Judgment of the Court below be reversed and that the case be remanded to the Court of Appeals with directions that the Decision and Order of the National Labor Relations Board in the **Associated Transport** cases be enforced.

Respectfully submitted,

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Houff Transfer, Inc.

ment, we often get other domestic business. Attached as Exhibit D is a sales flyer used in connection with the export consolidation business. As the flyer indicates, the service offered by Jayne's and San Juan moves less-than-trailerload shipments faster than other services offered to Puerto Rico. Attached as Exhibit E is a points directory indicating the services offered by Jayne's and the areas serviced. Jayne's sales effort with respect to the export less-than-containerload consolidation service also extends to Puerto Rico.

21. The pickup and delivery of freight and containers involves a series of contracts and communications between Jaynes, its customer, customs brokers, VOCC's and San Juan. All pickups, whether for the Puerto Rico consolidation operation or for normal domestic shipment, are arranged through Jayne's dispatch office. Customers call this office to request that Jayne's dispatch a driver to their facility to pick up cargo. When the driver arrives at the customer's facility, the driver signs a prepared bill of lading. Attached as Exhibit F is an example of a bill of lading. The bill of lading is the motor carrier's contract with its customer for the carriage of the goods. As the document indicates, the cargo movement is subject to the terms and conditions of the Uniform Domestic Straight Bill of Lading which is contained in the National Motor Freight Classification. Exhibit F indicates that the cargo covered by the bill is consigned to a consignee in Carolina, Puerto Rico. The driver's signature is at the bottom of the bill on the line labeled "shipper, per." Section 2(a) of the Uniform Straight Bill of Lading provides:

> No carrier is bound to transport said property by any particular schedule, train, vehicle or vessel, or in any particular market or otherwise than with reasonable dispatch.

Because Jayne's is responsible for cargo in its possession it retains complete control over this cargo. Section 2(a)

provides Jayne's the control needed to ensure safe and efficient freight transport.

22. A driver will make several pickups of less-than-trailerload cargo before returning to the Elizabeth terminal. When the pickup schedule is completed and the driver returns, the truck trailer is then stripped of the cargo. The cargo is sorted as to destination so that reloading for delivery may take place. Freight destined for San Juan, for instance, is placed in a certain location on the dock. It is then loaded for export the following day.

23. When a container destined for Puerto Rico is full, Jayne's calls San Juan to inform them of that fact. Jayne's also tells San Juan the total pieces and weight of the cargo. From this information San Juan makes up a dock receipt which enables the steamship company to accept the container when it is delivered to the pier. A San Juan driver then comes to our Elizabeth terminal to pick up the container for transport to the pier. Jayne's supplies this driver with a manifest indicating the contents of the container. The driver signs the manifest as proof that Jayne's has turned over the container to San Juan. A copy of such a manifest is attached as Exhibit G. The driver's signature, "Rudy", can be seen at the bottom of this manifest and is dated 1/2/81.

24. For freight not destined to San Juan, Jayne's prepares a freight bill from the bill of lading which specifies the cargo to be loaded into truck trailers for delivery to consignees. The freight bill is a six-part document, with one part serving as a delivery receipt. When the driver delivers the cargo to the consignees, the delivery receipt is kept as proof that the cargo was turned over.

25. Jayne's does make some pickups and deliveries from and to the piers. With respect to import cargo, a customs broker sends to Jayne's a pickup or delivery order indicating what cargo to pick up at the pier and where on the pier the cargo can be found. Examples of this document are attached as Exhibits E-1 through E-3. Jayne's directs a driver to pick up the import cargo at

the pier. If the cargo is less-than-trailerload shipment, the pickup at the pier would be one of several pickups made by the driver on a given day. If the import shipment is a full container load, the driver would go to the pier with a tractor, pick up the container and return to the Elizabeth terminal.

26. When a driver arrives at the pier, he intially gets in line with the other truckers waiting for entrance to the pier area. After getting in line the driver would check in at the pier gate. When the driver checks in he informs the person at the gate which container he wishes to pick up. The pier employee then tells the driver at what location on the pier the container can be found. Once inside the pier area the driver proceeds to the location of the container. The driver hooks on the container and leaves through a checkout gate. At the checkout gate the condition of the container is examined and an equipment interchange receipt is filled out. An example of such a receipt is attached as Exhibit I. The interchange receipt indicates that the interchange is subject to the terms and conditions of the Uniform Intermodal Interchange Agreement between the delivery and receiving carriers. This agreement provides Jayne's with complete control over containers released to it. The agreement provides:

> User shall have the right of complete control and supervision of equipment while in its possession and shall be responsible for returning the equipment in the same condition as received, ordinary wear and tear excepted.

This agreement governs the leasing of containers by the VOCC's to Jayne's. Under the terms of its tariff the VOCC agrees to make containers available. The driver then returns with the container to the terminal or delivers the container directly to the consignee. The amount of time needed to pick up a container or another less-than-containerload shipment from the pier varies between

a half hour and four hours. The vast majority of this time is spent waiting in various lines at the pier.

27. With respect to export cargo, cargo is either picked up by Jayne's at its customer's facility or is dropped off at the Jayne's terminal by other carriers. In order to make a delivery to the pier, Jayne's must have a dock receipt. A dock receipt is furnished either by a shipper at the time of pickup or by an export broker through the mail. The information on the dock receipt is that which is used by the VOCC to write an ocean bill of lading. The dock receipt also identifies the type of cargo and the pier to which the cargo is to be delivered. With respect to less-than-containerload export shipments, the delivery of the cargo to the pier by a Jayne's driver will be one of several deliveries made by the driver during the day. The driver would arrive at the pier, get in line and report to the check-in station. The driver would provide the document clerk at the gate with the dock receipt. The driver would then have to wait until a receiving door is available. When the driver's truck has been unloaded, the driver would leave and make other deliveries.

28. The process is different for delivering full container loads to the pier. The driver would arrive at the pier but would wait in a different line than the driver carrying less-than-containerload freight. The driver would present his dock receipt to the document clerk and an employee, probably of the steamship company, would inspect the container for damage. Exhibit I, the equipment interchange receipt, consists of two pages. The second page is the receipt which is filled out when the container is returned. After the container is inspected, the driver is told where in the yard to leave the container. On some occasions this instruction is delayed because there is insufficient room in the area designated for a particular ship for all the containers which are to be loaded on to that ship.

29. The delivery of less-than-containerload cargo for export may take between a half hour and eight or nine

hours. On occasion our drivers have waited an entire day without being able to get into the terminal area to have their trucks unloaded. With respect to full container loads, the time required for delivery is much less, though it can range between a half hour to six hours depending on lines at the pier. Because of the delays inherent in delivery of less-than-containerloads to the pier, it is not profitable, and Jayne's turns over much of this work to other carriers.

30. Prior to January 1, 1981, the ILA's Rules never interfered with Jayne's operation. Much of the container work allegedly performed by Jayne's in violation of the Rules developed after enforcement of the Rules was enjoined, although this same work on break bulk cargo was performed by Jayne's for years prior to and after containerized freight became prevalent. The December 6, 1980, agreement betwen the ILA and the VOCC's to enforce the Rules on Containers has adversely effected Jayne's business. In 1979, Jayne's loaded approximately 100 containers with consolidated loads. This constitutes approximately $100,000 worth of business. Jayne's did even more of this business in 1980. Under the ILA's Rules, the ILA would have to strip and restuff each of the consolidated full containers at the pier in order for them to be loaded onto the VOCC's steamship. Since January 1, 1981, when the ILA began enforcing its Rules, Jayne's has delivered one container to the pier. The ILA has refused to load the container unless it is permitted to strip and restuff the cargo. This is the container, the contents of which are represented on the manifest attached as Exhibit G. Jayne's has a second fully loaded container at its terminal, but has been informed by San Juan Freight Forwarders that the steamship company will not load the container unless it is first stripped and restuffed by ILA labor. Jayne's would ordinarily deliver at least two containers a week to the pier. Each container generates revenues of about $1,000. Enforcement of the ILA's Rules, therefore, has and will continue to

cause irreparable financial harm to Jayne's. Enforcement of the Rules has also caused Jayne's to drop plans for expansion of its consolidation services.

31. In addition to the effect on Jayne's business, enforcement of the Rules effectively eliminates the advantages of containerization. The delivery and pickup at the pier of less-than-trailerload cargo has always been significantly more time consuming than the delivery and pickup of full container loads. The increased amount of less-than-trailerload work which enforcement of the ILA's Rules will necessitate will undoubtedly increase the lines at the seaport terminal and lengthen what are already intolerable delays. Detention charges required to be paid by the sea carriers to motor carriers are not sufficient to offset the loss of revenue caused by these delays.

/s/ Robert W. Hagemann
ROBERT W. HAGEMANN

AFFIDAVIT OF C. E. HOUFF

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, C. E. Houff, being first duly sworn, depose and say:

I am, and since its incorporation in 1947 have been, President and the principal stockholder of Houff Transfer, Inc. (hereinafter "Houff Transfer"). Houff Transfer is and has been an irregular-route motor common carrier of general commodity freight in interstate commerce and has operated under a certificate of convenience and necessity issued by the Interstate Commerce Commission.

In 1948, Houff Transfer began operating its own trucking terminal at Baltimore, Maryland, and in 1955, began operating such a terminal at Norfolk, Virginia. At all times since the beginning of these terminal operations, Houff Transfer has employed fulltime local drivers and freight handlers to accomplish the work of picking up and delivering general commodity freight moving in interstate and foreign commerce, including intermediate handling of such freight for various purposes. Further, at all such times, Houff Transfer regularly and continuously has picked up such freight at the piers of the Baltimore and Hampton Roads ports, delivering such freight to the piers in these ports for loading onto ships.

Over these years, I have actually participated in the performance of the port-city freight handling and transportation work detailed in this Affidavit. Additionally, as President of Houff Transfer, I have directed and closely observed and monitored such work performed by Houff Transfer's drivers and freight handlers and by employees of other motor carriers with whom Houff Transfer competes. Accordingly, the matters set forth in this Affidavit are based entirely upon my personal knowledge of and experience in motor-carrier transportation activities and freight handling in the Baltimore and Hampton Roads ports.

In the early years of Houff Transfer's operations in these ports, large "trailer-containers" in twenty to forty foot lengths had not yet been introduced into the maritime industry. Even during these early years, however, Houff Transfer regularly and continuously utilized large trailers in its operations, ranging from twenty-four to thirty-five feet in length. Such trailers presently utilized by Houff Transfer range to a maximum length of forty-five feet. Although large "trailer-containers" were not regularly loaded on and off ships in the Baltimore and Hampton Roads ports until the mid-1960's, large boxes, crates and metal containers, up to eight feet in length, were regularly loaded on and off ships during the 1950's without any handling of the enclosed cargo by any workers at the piers. Both motor-carrier employees and stevedores and other pier workers participated in loading these boxes, crates and metal containers onto motor carriers' trailers. This loading was accomplished by such employees' utilization of cranes, custom motorized equipment and ramps. Loose or "break bulk" freight items in small boxes and other packages were loaded onto motor carriers' trailers both by motor-carrier employees and by stevedores and other pier workers.

The freight housed in larger boxes and crates and in the early metal containers routinely and frequently included smaller packages which were to be transported over the highways to different inland locations. Similarly, the smaller loose or "break bulk" freight items picked-up at the piers by a single truck or trailer frequently and routinely were destined to different consignees or recipients at different inland locations.

During these years prior to maritime utilization of large "trailer containers", Houff Transfer almost always received instructions from consignees' employees or consignees' brokers or other agents to pick up freight at the piers for transportation to the consignee at some inland location. In response to these instructions, Houff Transfer

would dispatch either a "straight truck" or a tractor-trailer to the piers to pick up the freight in the manner previously described. After the freight had been loaded onto the trucks or trailers at the piers, the trucks or tractor-trailers returned directly to Houff Transfer's trucking terminals in both the Baltimore and Hampton Roads ports. In the overwhelming majority of cases, these trucks or tractor-trailers were driven by "local" or "city" drivers whose driving work was performed only in the port-city geographic area. In practically all cases, the "local" or "city" truck or trailer would be unloaded at the port-city trucking terminal for reloading onto "over-the-road" equipment. Most frequently, this was because the freight that had been picked up at the piers was destined to multiple inland locations and would be loaded into different trucks or trailers which would be driven to such locations. Even in the relatively rare instances where truck-load freight was picked up at the piers, such freight would be reloaded either because it was destined to various inland points or for various other operational reasons. For example, the freight might be reloaded for proper weight distribution, to comply with differing "bridge-formulas" in various states, or to provide for the proper unloading sequence in the destination area. This work of loading and reloading trucks and trailers at the port-city trucking terminal was and is a regular, routine and continuous part of motor-carrier operations at all trucking terminal facilities and always has been accomplished by motor-carrier freight handlers in the ordinary course of their daily duties, as a part of motor-carrier overhead and without any additional charge to either the shipper or the recipient of the freight. These employees have been paid to perform this work because the work has at all times been necessary or convenient in the conduct of surface transportation operations. It has been and is precisely the same loading and unloading work that always has been done at all trucking terminals in order to accomplish and facilitate over-the-road transportation of freight. It is work which always has been routinely and continuously performed by motor-carrier employees, for many of the same reasons, both prior and subsequent to the introduction of "trailer-containers" into the maritime industry.

These work patterns of motor-carrier employees were not in any way altered by the introduction of "trailer-containers" into the maritime industry. After the "trailer-containers" were introduced into the maritime industry, the vast majority of the freight housed in such containers was not handled by any employees at the piers. Rather, the containers were placed intact on the piers and were hooked onto motor-carrier tractors by motor-carrier employees. Specifically, containers housing "shipper's loads" were never opened at the piers, and the freight housed in such containers was never handled at the piers, but the container was towed directly to the port-city trucking terminal. That is, when containers had been loaded with freight destined to a single consignee, the contents of the container were never handled by employees at the piers. Indeed, even "LTL" or "consolidated" containers, housing cargo destined to more than one consignee, were not always opened, and their contents handled, at the piers.

Even those "LTL" and "consolidated" containers frequently were towed directly to the trucking terminal without being opened at the piers. Prior to 1974, Houff Transfer opened, and reloaded the contents of, roughly ninety percent of all containers handled at its port-city trucking terminals. The containers were opened and reloaded for many of the same reasons that local motor-carrier equipment had been reloaded at such trucking terminals. Moreover, if the containers had not been reloaded at its trucking terminals, Houff Transfer would have been confronted with the additional problem of locating contemporaneous freight traffic destined to the port-city so that its tractor and driver would be engaged in revenue-producing work while returning the container

to the port-city. Again, the problems that would have been created by compulsory utilization of a particular container at a particular time were plainly and solely motor-carrier operational concerns.

Additionally, pursuant to "interchange agreements" with the owners of the containers, Houff Transfer was required to pay a daily rental charge and certain maintenance costs for the containers. These arrangements were practically identical to interchange agreements with other motor carriers, applicable to the utilization of other motor carriers' trailers when motor-carrier equipment was transferred between motor carriers. In both cases, Houff Transfer utilized its own equipment whenever feasible, reloading the freight and promptly returning the trailer or container to its owner in order to avoid unnecessary additional expense. Once more, operational considerations which always have affected motor-carrier work patterns are involved.

In the early months of 1974, for the first time, an ocean-going vessel operator complained of Houff Transfer's reloading activities performed at its trucking terminals. This purported enforcement of the ILA-CONASA Rules on Container resulted in cancellation of interchange agreements between Houff Transfer and the vessel owners and led to the charges filed by Houff Transfer with the Board.

Houff Transfer's rights and responsibilities attending its limited utilization of containers have been established by interchange agreements with the owners of the containers. These agreements have addressed only Houff Transfer's handling of the container equipment and not the work of handling the cargo housed in the containers. Pursuant to the interchange agreement, containers have been released to Houff Transfer, and the owner of the container, by the terms of the interchange agreement and the bill of lading between Houff Transfer and the

consignor or consignee, has retained rather neither control over nor responsibility for the container or its contents. The container owners have never been involved in, nor could they have been involved in, the work of handling freight in preparation for over-the-road transportation, because the container owners and maritime operations generally have had nothing to do with the determination that the freight-handling work should or should not be done. The work has been performed only when Houff Transfer has deemed it necessary or convenient to perform it in the immediate conduct of its surface-transportation operations.

Houff Transfer has made the involved operational judgments and decisions at its port-city trucking terminals, according to the immediate requirements of its surface-transportation operations, rather than at the piers and at the time the cargo arrives at the piers. In any event, the containers may be loaded or unloaded at the consignors' or consignees' places of business by their employees. There has never been any challenge to these work practices, and Houff Transfer always has performed loading and unloading services as agent for its customers.

This is the 10th day of October, 1980.

/s/ C. E. Houff
C. E. Houff

AFFIDAVIT OF RICHARD W. LEE

Richard W. Lee, being duly sworn, deposes and says:

I am a former chief executive officer and director of Dolphin Forwarding, Inc. I entered the transportation industry in 1948 representing the Texas Freight Company, Inc. in the New England area. The company offered the shipping public domestic freight forwarding (Part IV Interstate Common Carriage) services overland and marine coastal shipping from all points in New England to all points in the State of Texas including shipments moving through Texas for export to Mexico. Texas Freight had been in the business of providing marine coastal shipping services transporting goods of varying size lots since prior to World War II. The principal ports of departure and entry in the northeastern area for goods shipped by water by Texas Freight were the Ports of New York and Newark and, accordingly, my experience was limited primarily to those ports.

* * * *

Dolphin was not subject to the "Rules on Containers" until late 1974 and early 1975 when the steamship companies began refusing Dolphin access to booking spaces on their ships leaving the Ports of New York and Newark for Puerto Rico. The effect of such a refusal was to deny Dolphin access to those vessels on which it was seeking to transport the containers utilized by Dolphin. Moreover, this refusal was designed to compel Dolphin to submit all containers utilized by Dolphin to forced reloading by ILA labor at pierside within the Ports of New York and Newark. This refusal was done without regard to the owner, lessor or user of the containers being utilized by Dolphin since at the time that the booking spaces were

denied, the steamship companies did not know who owned, leased or used the containers refused. In addition, Dolphin was fined a total of $11,000 for violations of the "Rules on Containers" by Maritime Transportation Management, Inc. of Puerto Rico. (*See* documents attached hereto as Exhibit "D" and incorporated hereinby specific reference). Dolphin has steadfastly refused to pay these fines on the ground that the Shipping Act forbids discrimination between persons utilizing the services of sea carriers and thus passing on by a steamship company of fines extracted as a result of the "Rules on Containers." As a result of this refusal to provide booking in early 1975, Dolphin was forced to transport its containers overland to Jacksonville, Florida, to a steamship company which did not employ ILA labor and thus was not subject to the "Rules on Containers". Dolphin experienced greatly increased cost and a consequent loss of customers as a direct result of the steamship companies' actions in enforcing the "Rules on Containers". Dolphin thereafter resumed utilizing the Ports of New York and Newark as its port of entry and departure pending resolution by the Court and various administrative agencies of the problems presented by the "Rules on Containers".

Since January 1, 1981, Dolphin has once again become subject to enforcement of the "Rules on Containers" by the steamship companies and the ILA in the Port of New York. Dolphin has been unconditionally "refused" access to any containers by the steamship companies. Moreover, Dolphin has been "refused" booking spaces for containers which were packed and sealed in Brockton, Massachusetts, a city over two hundred miles away from the Port of New York. These particular containers would have been delivered *directly* to the dockside in the Port of New York, without any further off-pier consolidation, for immediate ocean shipment.

At least two containers which were loaded and delivered to dockside in the Port of Newark since January

1, 1981 have been placed in "holding areas" and the steamship companies have "refused" to ship them to Puerto Rico. Moreover, at least one of the containers which were *shipped* immediately prior to January 1, 1981 have been stripped by ILA deep-sea labor at dockside in the Port of San Juan, Puerto Rico.

In addition to the aforementioned effects of renewed enforcement of the "Rules on Containers", Dolphin has been informed by the steamship companies within the Ports of New York and Newark that, starting as of January 1, 1981, the steamship companies will not apply their liability maximum ($500) for containers to the individual shipments therein if the containers are stripped or stuffed by the ILA. Normally, if a container were opened for any reason, the $500 amount of steamship company liability would apply to each separate shipment resulting in a greater amount of money being available from the steamship companies to cover any damage or theft. Therefore, as a result of this action by the steamship companies, Dolphin's legal recourse for theft or damage to these individual shipments has been severely restricted.

In view of these actions by the steamship companies and upon its prior experience with the "Rules of Containers", Dolphin has diverted its shipments, originally intended for the Ports of New York and Newark, to the Port of Jacksonville where non-ILA labor will not strip or stuff Dolphin's containers. The additionnal per-container charge of $1400 necessitated by this excess overland transportation will necessarily be passed on, in large measure, to the general public who utilize Dolphin's services.

Continued implementation of the "Rules on Containers" would effectively destroy the business of off-pier consolidation for any CONASA port. NVOCCs would be forced either to accept the risks and expenses of on-pier con-

solidation or the added costs of overland shipment of LTL goods to non-CONASA ports. Moreover, forced handling or rehandling by ILA deep-sea labor often results in enormously inefficient loading of containers. It is not an uncommon experience that shipments of goods stripped from one container by ILA labor cannot be completely stuffed by ILA labor into another container, thus requiring the use of two containers. In any event, such added costs and risks would be passed on, directly or indirectly, to the consuming public.

The ability of Dolphin to coordinate the services previously described would be seriously impaired by enforcement of the "Rules on Containers". The transportation of containers, and the goods therein, would become subject to the whim of ILA labor. Pier congestion and the need for ILA handling of all LTL goods would preclude Dolphin's previously described service of rapid location of specific containers. There would be virtually no certainty about departure or arrival times and thus Dolphin's customers would have no assurance of when goods would be delivered. Since the import/export off-pier consolidator in a CONASA port would, for all intents and purposes, become extinct, Dolphin would be unable to exercise the coordination of transportation of goods which is the most significant aspect of the NVOCC's roles in intermodal traffic.

The effect upon the efficiency of the intermodal transportation by implementation of the "Rules on Containers" would be substantially adverse, since the goal of the system is the allowance of door-to-door delivery of containerized goods with minimal handling and interruption.

The Rules would impose a significant backward step for intermodal transportation which would effectively preclude further improvement in the system within the United States.

To the best of my knowledge, information and belief, the foregoing is true.

Further affiant sayeth not.

/s/ Richard W. Lee
RICHARD W. LEE

CITY OF BROCKTON)
COUNTY OF PLYMOUTH) ss:
COMMONWEALTH OF MASSACHUSETTS)

[Sep. 23, 1980]

PUERTO RICO MARITIME SHIPPING AUTHORITY

STANDARD TRAILER INTERCHANGE CONTRACT FOR CONTINENTAL UNITED STATES

1. The undersigned enter into this agreement governing their relationship with respect to lease of trailers, and to make this agreement operative respecting lease of individual trailers will cause to be executed the interchange receipt and inspection reports hereinafter mentioned. The term trailer as used herein shall refer to any load carrying vehicle without power, except that power to operate heating or refrigerating units.

2. At the time of interchange an authorized representative of the undersigned shall execute, in multiple copies as the lessor may require, a trailer interchange receipt and inspection report. The parties shall be bound by the notations on the receipt and inspection report.

3. The lessee:

3.1 Shall complete promptly and expeditiously the use for which the trailer has been leased to it and return the trailer to the terminal of the carrier from which received at the place received; or if drawn from a pool other than at a port of the lessor, lessee shall replace said trailer in kind with one drawn from the port of return of said trailer.

3.2 Shall not permit the trailer to go out of its possession without permission of the lessor in writing, as shown on the receipt and inspection report or otherwise in writing, and then only to the extent of written permission, and shall be responsible for the safe and timely return of the trailer to the lessor ordinary wear and tear excepted, notwithstanding that it may have had the per-

mission from the lessor to lease or interchange such trailer to another party.

3.3 Shall be responsible to the lessor for the performance of this agreement by itself and by all other persons into whose possession such trailer may go until its proper return to the lessor.

3.4 Shall have complete control and supervision of such trailer while in its possession; and the lessor shall have no right to control the detail of the work of any employee or agent operating or using said trailer during such time. Any person operating, in possession of, or using said trailer after the signing of said receipt and inspection report and until such form is signed returning the trailer to the lessor is not the agent or employee of the lessor for any purpose whatsoever.

3.5 Agrees to hold the lessor harmless *for any loss of or damage thereto* and from all liability for damages to persons or property being transported therein, arising out of the use, operation, maintenance or possession of said trailer, or arising from any other cause, until said trailer has been returned to the lessor and receipt issued therefor.

4. Interchange is made on a compensation basis, as shown in the table of charges below. Settlement shall be made at the end of each month. A day shall be considered a 24-hour period commencing at 12:01 a.m., or a fraction of any 24-hour period.

5. The lessor shall be entitled to all its lawful remedies, and shall be entitled to receive from the lessee the special compensation shown in the table of charges herein for all time until return of the trailer to lessor. In the event the trailer leased shall require repairs, the lessee shall cause the repairs to be made, provided, however, that consent of the lessor shall be first obtained if apparent cost of the repairs exceeds $100. In the event a leased trailer

is damaged, other than as provided for in the preceding sentence, the lessee shall, by repair, restore it to the condition in which it was received, and, in the event of failure of lessee to make such repair, it shall, nevertheless, be responsible for the cost thereof.

6. The lessor:

6.1 Shall equip it with tires and tubes of proper size. Thereafter, until the trailer is returned, repairs to tires and tubes shall be made by and at the expense of the lessee. In the event of blowout or total failure of a tire or tubes, lessee shall furnish replacement tires and tubes to return the trailer to the lessor (but shall retain such replacement tires and tubes upon redelivery of the trailer to the lessor) and shall return the blown out or unserviceable tire and tube with the trailer. In the event of failure to so return, payment therefor shall be made at the value thereof at the time of original interchange, which in the absence of specific information to the contrary shall be $145.00.

6.2 Does not make any warranty or representation, expressed or implied, as to the fitness or condition of the trailer so leased, including tire and tubes, and the lessee acquiring the use thereof does so at its own risk and inspection; provided, however, that on trailers considered to be in such mechanical condition as to be able to make the agreed tour without failure shall be leased but any repairs to vital parts such as brakes, wheel bearings, running gear, etc., necessary to complete tour shall be made by lessee and lessor billed when such repairs are in excess of $50 and lessor agrees to pay same. Such minor repairs as lights, latches, air connections, floor patching, and any other individual repair costing no more than $50 shall be absorbed by lessee in possession. The

lessee will be responsible for the labor expense in effecting repairs to refrigerating units. The lessor will be responsible for the cost of parts to refrigerating units when the old parts are returned to the lessor.

6.3 Shall equip it with state vehicle license plates, satisfactory mud flaps, working directional signal lights, clearance marker and stop lights, reflectors, and in compliance with Part 193 of Motor Carrier Safety Regulations.

7. The lessee agrees prior to returning of empty tank trailer to lessor and upon receipt of empty tank trailer from lessor to clean interior, dome and discharge area of tank trailer, cost to be absorbed by lessee. In the event tank trailer is returned unclean, lessor will refuse to accept tank trailer or accept tank trailer and clean for the account of the lessee.

8. THIS AGREEMENT and said trailer interchange receipt and inspection report shall constitute the entire agreement between the parties and no verbal amendment or modification thereof shall be permitted. This agreement may be supplemented or amended only by a written agreement.

9. TABLE OF CHARGES

SCHEDULE

Equipment		Normal Period Charges
A) Tandem Axle Van or Open Top		$8 per day
B) Tandem Axle Chassis w/o Container		$8 per day
C) Tandem Axle Refrigerator or Tanker		$16 per day
D) Tandem or tri-axle Lowboy or Step-down Flat Bed Trailer		$16 per day
Charges Per Day For Excess Periods		
Excess Period I	Line A & B	Line C & D
1st Day through 5th Day	$12 per day	$24 per day
Excess Period II	Line A & B	Line C & D
6th Day and all following days	$24 per day	$48 per day

E) On all interchanged equipment, the day of interchange and the first two days after the day of interchange will be considered as days of grace during which time no charge will be made for the use of the equipment. Where a two way movement of cargo is involved, there will be one (1) additional day of grace during which time no charge will be made for the use of the equipment.

F) The agreed normal period shall be two (2) working days (excluding Saturday, Sunday and Holidays) or fraction thereof on round trip movements of up to 300 miles; and four (4) working days (excluding Saturday, Sunday, and Holidays) or fraction thereof on round trip movements over 300 miles.

G) Charges per day for normal period shall apply to any 24-hour period or fraction thereof (excluding Saturday, Sunday and Holidays) unless otherwise specified in the interchange receipt and inspection report.

H) Where normal period ends on a Friday or a day preceding a Holiday, the following Saturday, Sunday and Holiday is excluded from charge.

I) At the termination of normal period, the first excess period shall commence and run for five calendar days.

At the termination of the first excess period, the second excess period will commence and continue for all calendar days thereafter until the equipment is returned to the lessor.

Charges for excess periods will apply for all Saturdays, Sundays, and Holidays therein.

J) Exceptions to charges for excess periods will be made and only the normal charges will apply only when such exceptions are set forth in the trailer lease inspection form covering a specific transaction, or otherwise in writing from lessor.

K) Where repairs to trailers are to be made under the provisions of Paragraph 5 (Page 2 above), the lessor shall be entitled to receive from the lessee compensation

equal to its costs each day a trailer remains out of operation because of the damage done to it. This cost or charge will be $8 and $12 per calendar day, including also Saturdays, Sundays and Holidays, for conventional and refrigerated trailers respectively.

10. Where excess trailer charges are caused by the acts of a shipper or consignee, the appropriate delay, demurrage or storage charges as outlined in the tariffs will be assessed by the carrier making the pickup or delivery. These charges will be billed by the carrier direct to the shipper or consignee separate from the normal freight charges. The lessee will still be responsible to the lessor for any excess trailer charges caused by this type of delay. The lessee's relief will be from the shipper or the consignee. The excess trailer, charges due lessor shall in no way be dependent on the collection of any delay, demurrage or storage charges from the shipper or consignee.

11. THIS AGREEMENT is for a period of one year from date and shall continue in effect from year to year. Either party to this agreement may terminate same as of any time by giving the other ten days' notice of such termination by registered or certified United States mail addressed to the other party at the address shown in this agreement or as changed by written notice.

EXECUTED AT Elizabeth, N.J./Brockton, Mass. this 5th day of August 19....

Puerto Rico Maritime Shipping Authority (NAME OF LESSOR)	Illegible (NAME OF LESSEE)
Puerto Rico Marine Management, Inc. (as agent for Puerto Rico Maritime Shipping Authority)	Illegible (NAME AND TITLE)
P. O. Box 1910, Elizabeth, New Jersey 07207 (ADDRESS)	Illegible (ADDRESS)

ADDENDUM TO STANDARD TRAILER INTERCHANGE CONTRACT

The following provisions shall apply and supercede those issued under the terms of the Standard Trailer Interchange Agreement:

I. Effective October 1, 1975, normal periods will be changed to reflect the following provisions:

Mileage (Round Trip)	Normal Period Days
0-300 miles	2
300-600 miles	4
600-900 miles	5
900 & over	6

II. Paragraph 6.1 shall be amended to read as follows:

"Shall equip it with tires and tubes of proper size. Thereafter, until the trailer is returned, repairs to tires and tubes shall be made by and at the expense of the lessee. In the event of blowout or total failure of a tire or tubes, lessee shall furnish replacement tires and tubes to return the trailer to the lessor (but shall retain such replacement tires and tubes upon redelivery of the trailer to the lessor) and shall return the blown out or unserviceable time and tube with the trailer. In the event of failure to so return, payment therefor shall be made at the value thereof at the time of original interchange, which in the absence of specific information to the contrary shall be $145.00. Lessor retains the right to determine if the cause of a blowout or a failure was due to abuse by the lessee. If such abuse is a result of a tire being run while flat, lessee shall be liable for replacement cost of new tire."

All other provisions of the Standard Trailer Interchange Agreement shall remain in effect.

EXECUTED AT Elizabeth, N.J./Brockton, Mass. this 5th day of August 19....

Puerto Rico Maritime Shipping Authority (NAME OR LESSOR)	Illegible (NAME OF LESSEE)
Phone No.:	Illegible
Puerto Rico Marine Management, Inc. (as agent for Puerto Rico Maritime Shipping Authority)	Illegible (NAME AND TITLE)
P. O. Box 1910, Elizabeth, New Jersey 07207 (ADDRESS)	Illegible (ADDRESS) Brockton, Mass. 02403

AFFIDAVIT

STATE OF NEW JERSEY)
) ss:
COUNTY OF UNION)

I, MATTHEW MAHON, JR., being of full age and duly sworn according to law depose and say:

1. I am President of Mahon's Express, located at 67 Jabez Street, Newark, New Jersey. I have been associated with Mahon's Express for the past 45 years, and for the past six years have been President of the Company.

2. Mahon's Express is a New Jersey corporation engaged in the trucking business with facilities at 67 Jabez Street, where it operates a terminal and office. During the preceding 12-month period, it derived revenue in excess of $50,000 for services performed for customers located outside the State of New Jersey. The company employs approximately 100 people, of which about 50 are drivers who cover the New York and New Jersey areas. Two of the oldest customers of the company are S. S. Kresge and F. W. Woolworth.

3. With respect to Kresge and Woolworth, Mahon's Express performs, among other services, a carrier function transporting goods from Mahon's warehouse to Port Newark for shipment to the retail stores of Kresge and Woolworth in Puerto Rico, the Virgin Islands and St. Thomas. Woolworth [1] directs its suppliers to ship certain quantities directly to the Mahon Express warehouse in Newark for forwarding to Puerto Rico. There are also shipments by common carrier, directly to Mahon's terminal from Woolworth warehouses in various states, of goods destined for Puerto Rico. In the course of preparing for shipment at the Newark terminal of Mahon, the

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[1] Hereafter, references to Woolworth are to be considered as references to Kresge, as well, because the situations are identical.

goods of the individual store owner, namely, Woolworth, are at all times segregated so that in any one shipment there is no mingling of the goods of Woolworth with the goods of Kresge, or anyone else, and that any container that is shipped through the Port Newark facilities consists of only the goods of one owner. In preparation for shipment through the port, the goods are taken from the Mahon warehouse and loaded directly at the premises there into a container belonging to an N.Y.S.A. member company. The container is then sealed and shipped by a Mahon employee, that is, driving a Mahon tractor to the port facility where the container is lifted and placed on shipboard by I.L.A. crews. All bills of lading prepared for shipment of these goods indicate that Woolworth is the owner and the shipper. The bills of lading indicate that the container is destined for the particular Woolworth store in Puerto Rico or nearby islands. Upon arrival of the ship at the port of destination, the container is removed from the ship and, again, transported from the dock facility directly to the Woolworth store where the seal is then broken for the first time. Throughout the transportation of a given container, beginning from its stuffing at the Mahon Express facility, through its shipment on water, to its ultimate destination at the store in Puerto Rico, there is no breakdown of that unit and no handling of the goods therein. The only indication on the bill of lading of any connection between Mahon and the goods being shipped is that it does identify Mahon as the carrier for purposes of meeting the security provisions of the port facility.

4. Mahon's Express Company has been performing at its terminal this container service for Woolworth stores located in Puerto Rico and the Caribbean Islands since approximately 1957. At that time, the containers into which the merchandise was loaded were Alcoa containers, which were very small containers with a capacity of approximately 50 cubic feet. Later, Pan Atlantic Steam ship Company containers were used and those of Water-

man S. S., which two companies were eventually bought out by Sea-Land Company. Thereafter, containers of Sea-Land, Seatrain and occasionally Transamerica were used. Now we are using containers supplied by Puerto Rican Marine Management, Inc. These companies are members of the N.Y.S.A. Prior to 1957, there were no stores of Woolworth or Kresge on the islands of Puerto Rico or nearby.

5. Since the inception of the clause in the agreement between the I.L.A. and the N.Y.S.A. (the CONASA rules), requiring the less than container and trailer loads originating within 50 miles of the port be consolidated by I.L.A., which may be approximately ten years ago, there have been various discussions between representatives of Mahon Express and the representatives of the I.L.A. and New York Shipping Association with respect to the manner in which Mahon was handling freight for Woolworth shipped through Port Newark for Puerto Rico. Over the years there have been three or four visits by representatives of the New York Shipping Association and the I.L.A. to the premises of Mahon Express, where various billing and shipping documents were examined to determine the method and manner in which Mahon was handling Woolworth goods going through the port for stores in Puerto Rico.

6. As a result of these conversations and on-site inspections, there was no contention raised that Mahon was doing I.L.A. work, and there was no warning or attempt to refuse to Mahon the use of containers by the members of the New York Shipping Association. The most recent visit from a representation of the I.L.A. occurred approximately two years ago.

7. On June 11, 1975 Steve L. Schulein, Manager of Staff Services for Puerto Rican Marine Management, Inc. told me in a telephone conversation that our method of operation was in violation of the CONASA rules and that starting June 12, 1975 Puerto Rican Marine Management Inc. would no longer supply Mahon Express with con-

tainers so long as we continue to operate as we now do. We could continue to use their containers only if we brought them to their terminal where I.L.A. members would strip and re-stuff the containers.

8. Later on June 11, 1975 Mahon Express was refused containers by Puerto Rican Marine Management, Inc. so long as we continue our present method of operation as described above.

I have read the foregoing, and it is true to the best of my knowledge and belief.

/s/ Matthew Mahon, Jr.
MATTHEW MAHON, JR.

STATE OF NEW JERSEY)
) ss:
COUNTY OF ESSEX)

I, MATTHEW MAHON, JR., business address, 67 Jabez Street, Newark, New Jersey, 07101, after being duly sworn state the following of my own personal knowledge:

1. I am the President of Mahon's Express. I have been employed by Mahon's Express since 1930 and have held my current position for six years. Prior to being President of the company, I was employed as General Manager, Vice President.

2. As President I am responsible for traffic, sales, and the general administration of the company. In addition to these general responsibilities, I am involved directly in the day-to-day supervision of employees. In addition to my knowledge of the operations of Mahon's Express, I also have an extensive background in motor carrier operations in the entire country. In 1955, I was the President of the Local and Short Haul Carriers Conference of the American Trucking Associations, the national organization of local and regional trucking associations. I held that position for three years. In 1965, I was President of the New Jersey Motor Truck Association. I held that position for two years. I am also a lifetime member of the Board of Directors of both of those associations. For more than 30 years I served as a rate member on the Middle Atlantic General Rate Committee. During the 1950's and 1960's I served as a member of the Executive Committee of the American Trucking Associations.

3. Mahon's Express was formed in 1905 by my father, and it remains a family-owned corporation. It is a short-haul, Class II cartage carrier. We presently serve New York, New Jersey and Pennsylvania. Attached as Exhibit A is a sales brochure describing the various services and the territories served by Mahon's Express. The current facility, located at 67 Jabez Street, is comprised of

a single building. The facility has approximately 40,000 square feet, and has room for parking approximately 100 trailers. It is entirely enclosed by Cyclone fence, and has 24-hour security. It is located approximately two miles from the Port of Newark. Attached as Exhibit B is a photograph of this facility.

4. The building at Jabez Street is T-shaped. On one side of the lower part of the T is a rail siding. There are doors along this rail siding which open at the level of the railroad car doors. Cargo is off-loaded from these rail cars and store at our facility for distribution in the New York-New Jersey area, for consolidation with other cargo for domestic shipment, or for consolidation with export cargo for shipment to Puerto Rico. On the other side of the lower portion of the T are 15 doors, also at tailgate level. Trucks back up to these doors, and their cargo is off-loaded into our storage area. This lower part of the T constitutes approximately 30,000 square feet of our storage space. The upper portion of the T constitutes approximately 10,000 square feet of space. This portion of the building is devoted solely to the consolidation of domestic and export shipments. Along the top of the T are 10 back-in spaces for trucks. Adjacent to these back-in spaces is a platform at tailgate level. Cargo is off-loaded from trucks onto this platform, moved from there to our staging area through one of the four doors adjacent to the platform, and then transported to the consignee or the pier.

5. Although the Jabez facility is the only building now operated by Mahon's Express, in the 69's and 70's the company also operated facilities located at Commercial Street, Newark, New Jersey and at the Port Authority Truck Terminal of Newark, 400 Delancy Street, Newark, New Jersey. We had 40,000 square feet of space at each of these facilities. At these two facilities Mahon's received freight, stored it and consolidated it into containers for export movement to Puerto Rico. At the Port Authority operation Mahon's utilized 30 back-in spaces for truck

trailers. At the Commercial Street facility Mahon's used approximately 24 doors.

6. Mahon's currently employs approximately 95 employees. Of these, approximately 70 are employed in the job classifications of drivers and platform men. When the company was operating its facilities at Commercial Street and Delancy Street, it employed an additional 7 or 8 platform men at each location. Mahon's also had support staff at each of these two additional locations. The drivers and dockmen employed by Mahon's are represented by the International Brotherhood of Teamsters, Local 478. In their work as platform men, employees use handtrucks, conveyors, forklift trucks, pallets, wheel-carts and other equipment for handling of freight. Almost all of the cargo handled at our Jabez Street facility must be handled by hand during some phase of the loading and unloading process.

7. I first saw the use of modern, large containers in approximately 1958. These containers were 35 feet long and were introduced by Pan-Atlantic Steamship Company. For years prior to 1958, however, Mahon's had offered to its customers both consolidation of export shipments, deconsolidation, storage and distribution of import cargo, and consolidation and direct delivery of domestic cargo to New Jersey and New York, including the five boroughs, Rockland, Orange and Nassau Counties of New York.

8. With respect to its pre-modern container domestic traffic Mahon's major customers were L. Bamberger Company, F. W. Woolworth Company, S. S. Kresge, now known as K-Mart Company, and J. Wiss and Sons, a cutlery company. For these companies, Mahon's performed local pickup and delivery services throughout the territory. For instance, a Mahon's driver would go to the five different railroad stations in Newark and pick up cargo designated for one of its customer stores. The driver would deliver the consolidated truckload of cargo to that store. The driver would then return to the rail-

road stations and do the same thing for another store. At that time, Woolworth's had 11 stores in Newark; S. S. Kresge and Bamberger's each had one store. J. Wiss had two receiving stations.

9. Between 1905 and 1922, Mahon's had no terminal. The drivers would use the railroad station as their terminal loading point. Between 1905 and 1918 all of this work was done with horses and wagons. Mahon's did not have its first motor vehicle until 1918. The driver of the horse-drawn wagon would load cargo from the railroad car to the wagon. Mahon's drivers also went to the pier area in New York to pick up import cargo destined for Mahon's four major customers. At the pier our driver would load the cargo from the back of the wagon into the front of the wagon.

10. In the 1920's the businesses of our four major customers significantly increased. Woolworth's had opened approximately 40 stores in the State of New Jersey, and a significant number of other stores in New York and Pennsylvania. Bamberger's, although still operating one store in New Jersey, had four warehouses in the state. Kresge had opened approximately 20 stores. As a result of this significant increase in business, Mahon's in 1922 built its terminal at the 67 Jabez Street location adjacent to the railroad siding.

11. At this facility, "pool cars" of cargo would be delivered to Mahon's via railroad cars. These pool cars would be shipped by one of our customers, such as Woolworth's, and would contain cargo destined to its various outlets. Mahon's employees would off-load the cargo from the railroad car into our terminal. We would then sort and segregate the cargo and load it onto our vehicle's for delivery to the designated consignees. At this time the cargo was pre-marked by our customer. When a railroad car was to be delivered to our facility, our customer would forward to us both a bill of lading covering the shipment and a manifest indicating the breakdown of stores and delivery point for each piece of cargo. In addition to this work for our retailing customers, we also performed pool car work for manufacturers. Manufacturers would deliver to us via the railroad, pool car cargo destined for many retailing chains. Again, our employees would off-load it onto our vehicles for delivery to the retailers. By this time, Mahon's had also developed additional customers. The Anchor Hocking Glass Company, as well as most other major glass manufacturing companies in the United States, were using Mahon's pool service. These companies would ship to Mahon's a pool car containing cargo destined for their retailing customers in the area. Toy manufacturers and enamelware manufacturers by this time had also begun using this service.

12. Also during the 20's, Mahon's pier work increased. Mahon's drivers would pick up import cargo at the pier and return it to Mahon's terminal for further sorting and segregation before delivery to the consignees. Although most of our pier work at this time involved import cargo, Mahon's did do some export cargo delivery. Our drivers would deliver to the pier Woolworth's export cargo bound for their stores in Cuba. Mahon's drivers would pick up Woolworth's export cargo from various manufacturing facilities within our area. The cargo would then be brought to our Jabez Street terminal where cargo for particular stores was consolidated into full truckloads. Our drivers would then deliver the full truckload bound for a particular store in Cuba to the pier. The driver would move the cargo from the truck to the tailgate of the truck, and the longshoremen would move the cargo from the tailgate of the truck onto the pier and ultimately onto the steamship. Wooloworth's obtained cheaper shipping rates by shipping full truckloads, rather than small less-than-truckloads.

13. Beginning in 1933, Mahon's obtained contract with the Pennsylvania Railroad for pickup and delivery services to and from Newark, Elizabeth, Linden, Rahway, North Arlington, Kearney, South Kearney. Mahon's ob-

tained this contract because of its relationship with the major customers of the Pennsylvania Railroad. Because of this contract, Mahon's obtained the right to pick up and deliver all cargo to the Pennsylvania Railroad. This generated a large amount of business and continued until 1956.

14. In the 1930's and 1940's, the business engaged in by Mahon's significanctly increased, but did not change in nature. Mahon's contined to make domestic pickups and deliveries, perform its pool car distribution service for import and domestic shipments, and consolidate export or domestic cargo for delivery to its customers' various outlets. In 1952, Woolworth's opened its first store in Puerto Rico. With the opening of this store, Mahon's began delivering approximately a truckload of export cargo a day to the pier for shipment to Woolworth's Puerto Rican store. This cargo came to Mahon's in various ways. On occasion, Mahon's driver picked up the export cargo at manufacturing facilities within our operating authority. Cargo also was picked up at a Woolworth's warehouse which at that time was located in the Bronx. Some of the cargo came to Mahon's terminal in the pool cars, where it would be separated from the rest of the pool car cargo for consolidation with other cargo destined to Puerto Rico. Mahon's would store all the cargo destined for the Puerto Rican store, and when it had accumulated into a full truckload, deliver it by motor vehicle to the pier.

15. Each piece of cargo delivered to the pier had to be "cubed", or measured and marked, before it could be loaded onto the steamship. This resulted from the steamship company's billing practice of charging the shipper either for density, or for weight, whichever produced the higher charge. Although our customer or Mahon's would already have measured and marked each piece of cargo before delivery to the pier, the longshoremen would reperform this task. This significantly lengthened the process of delivering cargo to the pier. As a result, de-

liveries often took up to 8 hours, and on occasion the driver would have to return to the pier with the balance of the shipment the following day.

16. Because of the delays and other expenses of making deliveries to the pier, with the increase in export traffic occasioned by the opening of Woolworth's Puerto Rican store, and shortly thereafter additional stores, Mahon's and its customers sought a way to decrease the cost in connection with the export work. In 1954 or 1955, Mahon's learned that small containers with 500 cubic feet of space were available from the Alcoa Steamship Company. These containers were used to bring mail or Army personnel household goods to the United States from Puerto Rico. However, Alcoa was having to transport the containers back to Puerto Rico empty. The savings to both Alcoa and Mahon's shipper-customer, prompted Alcoa to agree to provide containers to Mahon's with which Mahon's could ship its Puerto Rico-bound cargo.

17. Thereafter, Mahon's consolidated into these containers at its Jabez street terminal cargo bound for Woolworth's Puerto Rican stores. Each container was stuffed with cargo bound for a particular store. The containers would be loaded onto a flatbed truck at Mahon's terminal, usually three or four per truck, and delivered to the pier area. At the pier a crane would unload the container onto the pier. The driver would then return to the terminal with empty containers. These containers would be loaded by the ILA onto the steamships as a single piece of cargo. They would not be unloaded at the pier and reloaded by ILA labor.

18. Mahon's also performed some import services using containers similar to the Alcoa containers. These containers were owned by the Pennsylvania Railroad and were used by the railroad in conjunction with its import and export traffic. A company in Hoboken and Jersey City would instruct Mahon's to pick up the container at the pier and return it to its terminal. At the

terminal, Mahon's employees would unload the container and make the distributions directed by its Hoboken customers. The containers came either with or without a railroad chassis. Those that came without were loaded onto Mahon's flatbed truck at the pier by a crane. The containers on chassis would simply be hauled to the Jabez terminal as would a normal truck trailer. In either case, the ILA did not unload these import containers at the pier.

19. The small containers remained in use between 1954 and approximately 1958. At that time the Pan-Atlantic Steamship Company came into existence and began using 35-foot containers in the Puerto Rican trade.

20. With the advent of the Pan-Atlantic 35-foot container Mahon's began using the larger containers for its export shipments to Puerto Rico. Pan-Atlantic and S. S. Waterman Companies subsequently merged to become the Sealand Company, owned and operated by MacLean Industries.

21. The advent of the modern large container did not change in any respect Mahon's basic way of doing business. It continued to perform its pool car service, receiving cargo at its Jabez Street terminal either by railroad or other motor carriers. Mahon's employees would unload this cargo, segregate and sort it, and prepare it for export or domestic shipment to the consignee. In addition, about this time Woolworth's began using what it called a "warehouse invoice". A shipment from a single shipper would come to Mahon's in one truckload, but could be destined for 80 or more different stores. Mahon's would unload, segregate, sort, and mark or label this cargo in preparation for delivering it to the consignees designated by Woolworth's. Mahon's continued picking up containerloads of cargo at the pier and hauling them intact to its Jabez Street terminal. At the terminal, Mahon's employees would unload the container and either store or immediately deliver the cargo to the consignee according to Mahon's customer's instructions. Mahon's

continued to perform its domestic services including local pickups and deliveries within its operating area. It also continued to consolidate export cargo into containers, the only change being the increase in the size of the containers used. Employees, after the advent of the large container, also continued to use the same equipment at the terminal.

22. After the advent of the modern container and continuing until approximately 1970 or 1971, Mahon's performed the above-described services without interference by the ILA. Mahon's work increased, in part because it began performing work for K-Mart, the successor to S. S. Kresge. K-Mart opened its first store in 1958, and eventually increased its operation to include 8 stores. Because of the significant increase in consolidation work Mahon's opened the facilities at Commercial Street, Newark, New Jersey and at the Port Authority Truck Terminal of Newark.

23. In performing the work of consolidating export shipments and deconsolidating import shipments, Mahon's has alway worked as an agent for its customer. Woolworth's shipments are kept separate from Kresge's, and later K-Mart's, and vice versa. Mahon's customer specified the work it wished performed. Mahon's kept this relationship for various reasons. The intermingling of cargo creates billing problems, and problems with customs and declaration papers. In addition, Mahon's does not want the responsibility of being the shipper of the cargo. Intermingling of freight would require that Mahon's, rather than Woolworth's or K-Mart, be listed on the various shipping documents as the shipper of the cargo.

24. During the 1960's use of containerized shipping methods became increasingly more sophisticated. The services now performed by Mahon's at its terminal could not be performed at the pier by longshore labor. For instance, for Woolworth's and K-Mart, Mahon's actually breaks cargo down beyond cartons into individual pieces of merchandise for delivery to various stores. Examples

might include chinaware, desks, a pair of shoes, two or three writing pens and other types of merchandise. These small items are individually wrapped by Mahon's employees delivered to a domestic store, or packed into a container for export shipment to a store in Puerto Rico. Without containerization, these small individual pieces of merchandise could not be shipped in that form. Vessel operating common carriers have provided very detailed instructions on acceptable methods for packing and marking export cargo. Shipments such as those described would not comply with these requirements. To ship these types of items under the requirements of the steamship companies would be prohibitively expensive.

25. Containerization has had a profound impact on the freight transportation system. As indicated above, commodities not previously shipped by ocean transport can now pass to foreign locations protected by the container. An entirely new commodity mix of import and export cargo now passes over the pier. In addition, containerization has eliminated many of the risks previously inherent in ocean transport. The risks of pilferage and cargo damage have significantly decreased. Further, the risks of financial losses due to delays at the pier have decreased. Containerization has greatly increased the speed with which cargo can be loaded and off-loaded from ships and loaded and off-loaded from delivering and receiving motor carriers.

26. Containerization developed unimpeded by the longshoremen until approximately 1971. The ILA did not, until 1971, attempt to interfere with Mahon's operation. In 1971, Mike Nicholas, an employee of Sealand at that time and now of the New York Shipping Association, met with me at the terminal and informed me that we were violating the ILA's Rules on Containers. Nicholas suggested that the cargo we were loading in the containers for our various customers should be delivered to the pier for loading by longshoremen. At the time I had two loaded steamship containers in my yard which the sea carriers were refusing to handle. I agreed with Nicholas

that I would deliver the two fully-loaded containers to the pier where they would be rehandled by ILA labor and restuffed into two different containers and that I would also deliver three truckloads of cargo to the pier for the ILA to stuff into three other containers. I explained to Nicholas that the cargo would have to be packed in such a way at the pier so that the cargo could be off-loaded in Puerto Rico in the order in which deliveries to the various stores were to be made. I also informed Nicholas that the light cargo at the top of the fully-loaded containers would still have to be at the top of the container once the ILA rehandled the cargo. Likewise the cargo at the bottom of the fully-loaded containers would have to end up at the bottom of the container which the ILA intended to load. Nicholas agreed, and the two containers and three truckloads of cargo were delivered to the pier. When the ILA had completed its loading tasks, instead of five containers being shipped to Puerto Rico, the cargo had been loaded into eight or nine containers. Instead of paying for five containerloads, our customer had to pay for sea carriage of the eight or nine trailers. The ILA simply could not load the containers in the same way and in the same order that Mahon's employees could load them. I informed Nicholas of my opinion, and he disagreed. However, prior to the incident next discussed our containers were not rehandled by the ILA.

27. In 1972, we discovered that ILA labor had begun arbitrarily rehandling certain containers consolidated for export shipment at our Jabez Street terminal. The rehandling came to light because various Woolworth stores in Puerto Rico had not been receiving the cargo specified on the manifest or on the order specifying the proper method of unloading. In addition, instead of the cargo being in one container, it would often be in two containers with two different numbers and two different seals. I confronted Nicholas and other officials at Sealand concerning this practice. The general manager of the Woolworth Company also spoke with these officials concerning

this problem. The ILA ceased rehandling these containers after our discussions.

28. In 1972 or 1973 Roy C. Williams, an attorney for the New York Shipping Association, and another man who I believe was named John McDonald, Vice President of the ILA, visited me at our office at the Jabez Street terminal. They informed me that they suspected that I was violating the ILA's Rules on Containers. I asserted that Mahon's Express was merely an agent for the customers with whom we did business. I showed them that even in our facilities, Woolworth's cargo was separated by a wall from K-Mart's cargo. Each customer's cargo was handled by separate employees, and the containers were shipped under the customers' names. Williams and McDonald indicated that there would be less problems if the customer would actually pay my employees directly for the loading and unloading work. They indicated after our discussions that they would get back to me. I did not hear from these officials again, and the ILA did not attempt to rehandle containers stuffed at our facility until June 11, 1975.

29. Steve L. Schulein, Manager of Staff Services for Puerto Rican Marine Management, Inc. told me in a telephone conversation that our method of operation was in violation of the CONASA rules and that starting June 12, 1975 Puerto Rican Marine Management, Inc. would no longer supply Mahon Express with containers so long as we continue to operate as we now do. We could continue to use their containers only if we brought them to their terminal where I.L.A. members would strip and restuff the containers. Later on June 11, 1975 Mahon Express was refused containers by Puerto Rican Marine Management, Inc. so long as we continue our present method of operation as described above. After Mahon's filed a charge with the NLRB, the ILA did not continue to press these demands, and our containers passed through the port without interference.

30. The rehandling of our containers by ILA labor has until very recently, been sporadic. In the 1970's prior to

the injunction which issued in the Consolidated Express unfair labor practice proceeding, rehandling of our consolidated containers and refusals to release import containers coincided with the ILA's attempts to renegotiate its Rules on Containers. Other than these occasional interruptions, the ILA did not rehandle Mahon's export containers or refuse to turn over import containers to be delivered to Mahon's terminal.

31. In the 1970's during those periods when the ILA refused to handle containers consolidated at our terminal, Mahon's would load export cargo into railroad truck-train trailers for delivery by rail to Jacksonville, Florida. At Jacksonville, these trailers would be loaded intact onto a barge for ocean transport to Puerto Rico. At Puerto Rico the railroad truck-train trailers would be rolled off the barge and would be picked up by the customer's designated carrier for delivery to its store. The company which conducted this railroad-barge-truck-train trailer operation was Trailer Marine Transport Corporation. This company now refuses to continue this operation.

32. The enforcement by the ILA of its Rules on Containers has never resulted in the return to the pier of the consolidation or deconsolidation work performed by Mahon's at its terminal. As indicated, much of the consolidation work performed at the terminal was sent overland by the TMT railroad truck trailer operation. In addition, our customers would consolidate shipments at their own facilities rather than sending less-than-containerload shippers to the pier. Customers simply will not direct shipments to the pier for consolidation by the ILA. In addition to the prohibitively expensive packing requirements discussed above, the paperwork which would be required to document shipments from dozens of shippers to dozens of different stores in Puerto Rico would be expensive and confusing. Further the customer would have to pay the less-than-containerload rate on each of the small shipments. The effect of the ILA's prior attempts and present enforcement of its Rules has merely

been the diversion from Mahon's of much of its container business. In the 1960's and 1970's Mahon's delivered to the pier approximately 2,000 containers each year which it had consolidated at its terminal. By last year this number had decreased to 400. Our import traffic has also significantly decreased. Mahon's has ceased its operations at Commercial Street and the Port Authority Truck Terminal because of this loss of business.

33. The ILA's December 6, 1980 agreement with the vessel operating common carriers to enforce the Rules as of January 1, 1981 has impacted on our business as well. Mike Sheehan, of Puerto Rico Marine Management, Inc., contacted me on Friday, January 10th to inform us that we could no longer pick up and deliver containers to the steamship company. Since that time the sea carrier has requested us to pick up two containers previously delivered to the pier at their request. The ILA claims the containers were loaded in violation of the Rules. Our customers are continuing to divert cargo from the Newark area in order to avoid the ILA's Rules. The work formerly done at our terminal is not being shifted to the pier.

34. The process of picking up and delivering loose and containerized cargo to and from the pier has always involved a series of contracts between Mahon's, the sea carrier, and Mahon's customer. When a Mahon's driver picks up cargo at a manufacturer's or any other type of facility, the driver upon receiving the goods signs a prepared bill of lading. Attached as Exhibit C is a short-form bill of lading which is used by Mahon's as its contract for carriage with the customer. This bill of lading incorporates the terms of the Uniform Straight Bill of Lading found in the National Motor Freight classification. One provision of the Uniform Straight Bill of Lading provides:

> "No carrier is bound to transport said property by any particular schedule, train, vehicle or vessel or in any particular market or otherwise than with reasonable dispatch."

Under federal law, Mahon's is financially responsible for cargo in its possession. The provision in the Uniform Straight Bill of Lading, therefore, is necessary to give Mahon's the flexibility to determine the proper and safe method of carrier. Mahon's maintains complete control over the cargo in its possession. If the cargo is less than truckload, the driver makes other pickups before returning to Mahon's terminal. At the terminal the cargo is off-loaded from the truck, sorted and segregated for subsequent delivery to the pier or to domestic consignees. With respect to the Puerto Rican-bound cargo, Mahon's would already have received from its customer a warehouse invoice indicating how the cargo was to be consolidated and to what stores it was to be shipped. Attached as Exhibit D is a warehouse invoice. From the warehouse invoice, Mahon's makes up another bill of lading covering the shipment from its terminal to the pier. Mahon's also prepares a manifest which indicates the entire contents of a container. A manifest is attached as Exhibit E. The manifest also provides "Schedule B" numbers for identification of the commodities in the container. This is required by the steamship companies, the U.S. Customs Department and the officials in charge of excise taxes. Prior to delivery of the container or cargo to the pier, Mahon's prepares a dock receipt. An example of a dock receipt is attached as Exhibit F. A dock receipt shows the container number, the sea number, the consignee, the final destination, the carrier who is to make the delivery on the import side, the total number of pieces of cargo, the weight of the cargo, and the valuation. The manifest is attached and incorporated by reference in the dock receipt. After the driver has delivered the container to the pier and deposited in the appropriate spot in the yard, the driver is given one copy of the dock receipt as evidence of his delivery. From the dock receipt we prepare our freight bill. For import cargo, Mahon's is contacted by a broker in the port area who informs us that we are to pick up a container or other cargo. The broker supplies a delivery order which our driver pre-

sents at the pier and from which we prepare our freight bill. Our customer's agent supplies us with a Manifest with instructions for delivery of the cargo in a consolidated container. An example is attached as Exhibit G. In addition to these documents, the interchange of containers is governed by the terms of an Equipment Interchange Receipt. Such a receipt is used when the container is inspected and any damage to the container is indicated on this receipt. This receipt incorporates the terms of the Uniform Intermodal Interchange Agreement entered into by various motor carriers and vessel operating common carriers. A copy of such a receipt is attached as Exhibit E. The Uniform Intermodal Interchange Agreement provides in part:

> "User shall have the right of complete control and supervision of equipment while in its possession and shall be responsible for returning the equipment in the same condition as received, ordinary wear and tear accepted."

Once turned over to Mahon's Express, therefore, Mahon's has complete control of the container and, pursuant to federal law and its bill of lading of the cargo contained therein. Under the trailer interchange receipt, the trailer is inspected on the import side when it is removed from the pier area and on the export side when it is returned to the pier area. Mahon's Express' customers may be manufacturers, retailers or other businesses. Other than perhaps recommending our services as a motor carrier to some customer, steamship lines never directly contract for our services as a motor carrier. With virtually no exceptions, our customers contact us directly. Likewise, our customers determine what cargo will be consolidated into export containers, what import containers will be deconsolidated and what import cargo will be stored or delivered directly to a consignee.

/s/ Matthew Mahon, Jr.
MATTHEW MAHON, JR.

AFFIDAVIT

STATE OF PENNSYLVANIA)
) ss:
PHILADELPHIA COUNTY)

I, Dominic C. Marano, having been duly sworn and cautioned, state the following of my own personal knowledge and belief:

I currently am employed as President of Marty's Express, Inc. I have held this position for approximately one year. Previous to this I was employed as Vice President of the Company, and before that as Traffic Manager.

I have been employed at Marty's Express since 1962. The company began operations in 1936. My father, Martin Marano, served as President until I assumed this position. I had knowledge of the company's day-to-day operations before I began working for Marty's in 1962.

Marty's Express is a motor truck transportation company operating under I.C.C. certification in four states. The specific services provided by the company are more fully discussed below.

The company currently operates two facilities. One facility is located in Lancaster, Pennsylvania, the other at 4201 Tacony Street, Philadelphia, Pennsylvania. The facility in Lancaster is approximately 65 miles from the Philadelphia terminal.

In 1958, prior to the advent of the modern (8'x8'x20' or 40') container, the Company ran a local cartage operation. It employed approximately 15 employees in the job classifications of driver, helper, and platform worker. These employees drove, loaded and unloaded trucks, sorted, labeled and palletized cargo. Their equipment consisted of trucks, trailers, forklift trucks and binding machines. They were represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 107.

In 1958 the majority of our business consisted of the transporting of import cargo from the piers to department stores and manufacturers. The Company's I.C.C. authority at that time was limited to the carriage of furniture.

However, the service offered at that time was not limited to mere carriage of freight. Consignee-department store chains importing trailerloads of cargo often directed us to distribute the cargo to their various stores. Marty's would haul the cargo to its terminal, where it would unload, segregate and label it. The cargo would then be transported by Marty's or other carriers to locations identified by our customer.

Marty's also arranged for transportation by other carriers of import cargo which Marty's had transported from the pier to its terminal. Because Marty's had contact with other carriers, customers would rely on it to arrange for air or motor carrier transportation of the cargo to specified locations.

The process of picking up import cargo at the pier began with the customer or its agent, a broker or freight forwarder, contacting Marty's concerning the pickup of import cargo. The customer would usually supply us with a bill of lading, the broker with a delivery order. A delivery order is attached hereto as Exhibit A. Bills of lading are attached as Exhibit B.

After receiving either or both of these documents, the company would dispatch a driver to the pier to pick up the freight. In 1958, the "pier" consisted of a number of finger piers along Delaware Avenue. The driver would report to the guard shack on the perimeter of the pier area to obtain a pass to the terminal. The driver could not drive his vehicle inside the terminal without this pass. On the majority of occasions, trucks were backed up, and the driver would have to wait as long as one or two hours before moving inside.

During that one- or two-hour period, the driver would report to a clerk for the sea carrier company which had

transported the cargo. The clerk would verify that the driver had a document authorizing him to pick up cargo. This is the only task the driver could perform during the time spent waiting to enter the terminal. The rest of the period was "dead time," the cost of which Marty's had to absorb.

After the driver gained entry to the terminal, he would report to a checker, employed by the terminal operator. The checker would inform the driver whether Customs had inspected and released the cargo which the driver wished to pick up. If Customs had, the checker would ride with the trucker to the point on the pier where the cargo had been stacked.

In 1958, the majority of cargo was loose, noncontainerized cargo. After finding the cargo on the pier, the driver would load the cargo onto his truck. If the job was more than the driver could handle, Marty's would send a second employee along with the driver to the pier. Marty's could also pay longshore labor to assist the driver in this work. Marty's had the right to choose whether to use its own employees or ILA labor to load its trucks.

Although modern containers had not yet appeared in the Philadelphia Port at that time, some smaller boxes approximately 10 feet by 8 feet were used. These containers were introduced to preclude cargo damage and pilferage. I.L.A. labor would move these containers to the tailgate of the truck. The trucker would strip the container and load the cargo into his truck. The trucker could also haul the box on a flatbed truck back to the Marty's terminal, where the box would be stripped at its cargo transported to the consignee.

Marty's Express' only facility in 1958 consisted of an 8,000 square foot terminal with approximately 800 square feet of platform space. The terminal served in part as a garage in which the company's trucks were parked, loaded, and unloaded.

Beginning in 1962, the company leased a second truck terminal which gave it an additional 8,000 square feet

of covered dock space. By 1967 Marty's operating authority enabled it to offer short-haul freight transportation between Philadelphia and New York. The company had by that time expanded its work force to 27 employees in the job classifications represented by Teamsters Local 107.

Modern containers appeared in the Philadelphia Port in the mid 1960's. Between 1967 and 1972 containerization rapidly developed and changed the cargo transportation system in the Philadelphia port. The finger piers previously used became obsolete. Packer Marine Terminal and Tioga Marine Terminal began handling most of the port cargo. Exhibit C shows the types of cargo we handle.

Just as before containerization, Marty's Express' customers, or their agents, instructed the company to pick up freight at the pier. Delivery orders or bills of lading were supplied, and a Marty's Express driver was dispatched to the pier. Because of the increase in the amount of cargo being handled at the pier by the late 1960's and early 1970's, however, the wait outside the guard shack at the head of the pier increased to three to four hours.

After being admitted to the pier a checker would show the driver where the container was located. The checker would also inform the trucker whether Customs had inspected and released the container. Some containers were not cleared at the pier by Customs but remained "in transit" and bonded until coming to rest at some point inland. Customs would clear these containers at an off-pier location.

After finding the container on the pier, the checker would fill out a Trailer Interchange Report. An example of this report is attached as Exhibit D. This report documents the receipt by the trucker of the container, as well as the condition of the container. It, along with the Uniform Equipment Interchange Agreement, spells out the terms of the agreement under which the trucker assumes responsibility for the container.

After signing the Interchange Report, Marty's driver would leave the pier and return the container to the truck terminal or haul it to the consignee.

With containerization, Marty's also began handling export cargo. At the request of a manufacturer, Marty's would pick up the container at the manufacturer's facility and deliver it to the pier. The driver would encounter the usual delays outside the terminal, and once inside would report to the clerk for the sea carrier which was to transport the cargo. The driver would present the clerk with a dock receipt, an example of which is attached as Exhibit E. The receipt evidences the sea carrier's receipt of the cargo.

The driver would then speak with a checker who would examine the condition of the container, fill out a Trailer Interchange Report, and tell the driver where to drop the container. The driver would drop the container and return to Marty's terminal.

To return an empty container, a driver would follow the procedure with respect to export cargo. No documents would be exchanged with the sea carrier's clerk, however.

With containerization came a diversification of Marty's trucking services. In 1968 Marty's set up a warehouse operation in Camden, New Jersey, to handle containerized cargo imported by Action Industries. The warehouse operated under the name Marano Enterprises. Action was at that time importing large quantities of merchandise for distribution to various retail stores. The merchandise was imported in full container loads.

Marty's Express drivers would pick up containers at the Philadelphia piers and transport the containers to the Marano Enterprises warehouse. The containers would there be stripped by Marano Enterprises' Teamster employees and the cargo stored for distribution. In accordance with Action's instructions, Marty's released most of the cargo within 30 days of its initial storage. The cargo was transported from the warehouse by Marty's trucks and other motor truck operations.

Marty's provided a much more efficient service to Action than could have been offered by sea carriers or pier terminal operators. Because the cargo was containerized, it was not exposed at the pier to damage or pilferage. Cargo also did not have to be loaded into the truck trailer at the pier. The driver simply hauled the fully loaded container to Marty's warehouse. Had the terminal operator attempted to offer this warehousing service, each time Action would have wanted cargo released, a motor carrier would have had to face the delays and expenses inherent in picking up cargo at the pier.

The volume of cargo handled at the warehouse was so significant that the I.L.A. inquired at the warehouse facility about the nature of our operation. I explained to the I.L.A. officials that we were running a basic warehousing operation. No action was taken against Marty's Express or Marano Enterprises by the I.L.A. with respect to the warehouse facility. I operated this facility until approximately 1970.

Marty's performed on a smaller scale a similar service for other customers. A customer would ask Marty's to distribute part of the cargo in a container and hold the rest of the cargo until further instructions. Marty's would later release and deliver the cargo as instructed.

With containerization, employees in the driver, helper and platform worker job classifications continued to perform essentially the same work as they performed when Marty's handled only loose cargo. Truck trailers were loaded and unloaded. Cargo was segregated, palletized and labeled. The volume of work, however, continually increased.

By 1972 Marty's employed 95 persons in the job classifications represented by Teamsters Local 107. It had also begun leasing a two-acre terminal with 15,000 square feet under roof at 2335 Wheatsheaf Lane. Adjacent to the terminal was a railroad siding. Attached as Exhibit P is a photograph of this facility.

Marty's I.C.C. operating authority had not changed since 1967. Although Marty's continued to perform

freight transportation services, an increasing percentage of its work related to containerized cargo movements. By 1972 approximately 53 percent of the general cargo which Marty's picked up at the pier was in containerized form. As of 1972 Marty's handled only full shippers load containers, containers filled with the cargo of one consignee.

By 1972, many manufacturers and department stores were using Marty's as a distribution arm. Cargo in a full shipper's load container consigned to an area department store chain would have to be delivered to ten different stores. Marty's would strip the container at its truck terminal, sort and label the cargo, and deliver the appropriate amount to each of the facilities.

Some such department store chains operate warehouses. For these chains Marty's would either perform the service described above or deliver the container to the warehouse where Marty's employees would strip the container for storage of the cargo. In many cases the cargo would not be warehoused for thirty days.

Marty's would also strip full shipper's load for reasons of economy. When a full shipper's load was destined to an area around which Marty's had to make another delivery, Marty's would not haul a 20-foot container to the consignee, return to the terminal, and make another trip to the same location. It would strip the 20-foot container of its cargo and consolidate into its own equipment that cargo and the cargo going to another consignee in the same area.

Similarly, if Marty's knew that it would have to make a backhaul in an amount filling a conventional trailer, it would not haul a 20-foot container to the location and return with half of the backhaul load. It would strip the 20-foot container of the cargo, load it into a conventional trailer, and make the delivery. It could then return with the full backhaul load.

In most circumstances Marty's will not break a container's seal without the customer's permission. Upon the

breaking of the seal, Marty's can be held liable for any deficiencies in the merchandise supposedly in the container. When Marty's acts as a customers distribution arm, it breaks the seal with the customers permission. On some occasions Marty's will strip a container for efficiency reasons without seeking authorization from the customer.

Throughout the 1970's containerization continued to increase in the Philadelphia Port area. In 1975 Marty's opened its facility in Lancaster, Pennsylvania, where it currently employs ten persons in the job classifications of helper, driver and platform worker. These employees are represented by Teamsters Local 771.

In 1978 Marty's moved its Philadelphia operation to its present location at 4201 Tacony Street. This facility has 30,000 square feet under roof and sits on a ten-and-one-half-acre lot. Photographs of the Tacony Street facility are attached hereto as Exhibit F.

By 1978 Marty's employed 130 employees in the job classifications represented by Local 107 at the Tacony Street facility. Although Marty's I.C.C. operating authority has not changed, it has applied for operating authority in eight additional states. This authority was granted by the I.C.C., but is currently under appeal by competing carriers.

Marty's performs a large volume of container work performed as is evident from its 1979 statistics. In 1979, Marty's hauled 10 million pounds of import general break bulk cargo from the pier. Ten percent of this amount was in the form of noncontainerized break bulk cargo. Ninety percent of the break bulk cargo was containerized. Eighty percent of the import containers were full shipper's loads. Fifteen percent were less than container loads. Five percent of the full shipper's loads were stripped by Marty's at its Tacony Street terminal. Twenty-three to twenty-four percent of the full shipper's loads were delivered to a warehouse for an area department store. These containers were stripped at the warehouse by Marty's employees, and much of the cargo was released within 30 days. All

of the less than container loads were stripped by Marty's at its facility.

On the export side, Marty's hauled 2,350,000 pounds of general break bulk cargo. Some of this cargo went to the Philadelphia pier, and some to the railroad yard for transport, via the land-bridge system discussed below to the port of Seattle. Of the total amount 47 percent was noncontainerized and 53 percent containerized. Sixty-six percent of the containers were full shipper's loads, and 34 percent less than container loads. All of the full shipper's loads went to the pier. All of the consolidated loads went to the railroad yard. Although Marty's did not stuff any of the export full shipper's loads at its Philadelphia terminal, 100 percent of the export less than container loads were stuffed by Marty's at its Philadelphia facility.

With containerization Marty's continued to diversify the services it offered. In 1976, American President Lines ("APL"), a sea carrier, began operating a land-bridge container transportation system. Because American President Lines has no port of call on the East Coast, it brings import cargo to the West Coast port in Seattle and ships containers across the country on piggy-back railroad cars.

APL land-bridges both consolidated and full shipper's load containers. Marty's picks up these containers at the railroad yard in Philadelphia and brings them to its Tacony Street terminal. The full shipper's load containers are delivered intact to the consignees by Marty's truck terminal. Marty's segregates and labels this cargo and either distributes it itself or holds it for distribution by other motor carriers. APL instructs us as to the proper handling of all of its containers.

Marty's also stuffs consolidated containers for APL. Various manufacturers and carriers contact Marty's when they have loose APL cargo to be picked up or delivered to Marty's. Marty's consolidates this loose cargo into containers and transports the containers to a Philadelphia railroad yard. APL communicates with Marty's to determine the number of "stuffers" ready for shipment,

but does not contact Marty's to instruct it to pick up loose cargo. Manufacturers and carriers directly contact Marty's to inform it that the loose cargo is available for pick up by Marty's or will be delivered to Marty's.

Marty's continues to act as a distributor of the products of area department stores. This service has been facilitated by Marty's providing office space for Customs officials at its Tacony Street terminal. Cargo not cleared at the Philadelphia pier and remaining "in transit" is cleared by customs officials at Marty's terminal. Because the cargo is not cleared at the pier it can be more quickly moved to Marty's terminal for distribution.

Because of the volume of traffic and the limited pier space, picking up import containers at the pier or returning containers to the pier remains a time-consuming procedure. Delays of up to eight hours are frequently encountered. These delays have so increased the cost of pier container work that certain of the work does not even produce a profit.

Marty's administrative structure consists of a president, a vice president, a dispatcher, a dock supervisor, a traffic manager, a trailer control person, and an import clerk. The vice president supervises the five latter individuals.

The import clerk is responsible for all work relating to the APL land-bridge system. The clerk must see that containers are picked up at the railroad yard. He also makes certain that distribution of cargo occurs in accordance with APL's instructions. The clerk also coordinates the consolidation of loose cargo for APL.

The trailer control employee is responsible for all appointment times, deliveries, pier Customs problems, and other problems relating to the proper delivery of cargo.

The dispatcher is responsible for assigning drivers to pickup and deliveries.

The dock supervisor supervises the loading and unloading of all freight, including containerized freight.

The traffic manager formulates and files tariffs with the proper government agencies.

Enforcement of the Rules as currently written would at least hinder and probably eliminate Marty's ability to offer various services now offered its customers. The consolidated container loads stripped and stuffed by Marty's for American President Lines would fall within the Rules. The Rules would require that these containers be stuffed and stripped at the pier, and the delays inherent in pier work would be intolerable to APL's operation.

Similarly, full shipper's loads stripped by Marty's for subsequent distribution according to the consignee's instructions, and for other efficiency reasons, would also fall within the Rules. All of these containers would have to be stripped at the pier. Marty's employees would have to pick up the loose cargo at the pier, return to the Tacony Street terminal, unload the cargo, consolidate it into trucks with other cargo destined for the same areas and only then make delivery. The handling of this volume of loose carge at the pier would undoubtedly increase the already intolerable delays. This, along with rehandling at the truck terminal, would triple the cost of carriage.

The Philadelphia pier terminals have insufficient amounts of covered storage space to accommodate the volume of loose cargo which would result from enforcement of the Rules. The terminals have not been developed with an eye toward handling of large volumes of loose cargo. At the Packer Avenue Terminal, for instance, one transit shed has been demolished to make room for a new 375-ton container crane. The City's efforts to purchase and develop additional land for the Tioga Terminal have been blocked by the Environmental Protection Agency and other regulatory agencies.

If Marty's Express customers preferred that their containers be stripped or stuffed at the pier, they could now choose that service. They have chosen instead to have their containers stripped or stuffed at Marty's truck terminal. The service offered by Marty's and other truck-

ing companies is more efficient than any such service which could be offered by the sea carriers or terminal operators. Enforcement of the Rules would eliminate these efficiency grains, and would prevent our customers from specifying that we perform the stripping and stuffing work.

The bills of lading attached as Exhibit B are contracts between Marty's Express and its customer. Section 2(a) of the bill states:

> "No carrier is bound to transport said property by any particular schedule, train, vehicle or vessel, or in time for any particular market or otherwise than with reasonable dispatch."

Unless the customer contracts otherwise, Marty's has the contractual right to choose the 'vehicle' in which it will transport a customer's cargo. This right is essential because the carrier is responsible to its customer for losses occurring to the cargo while in the carrier's possession and control. The carrier must have complete control over the cargo while in its possession.

Under the terms of its contract with sea carriers, Marty's Express also has complete control of containers in its possession.

Under the terms of its contract with sea carriers, Marty's Express also has complete control of containers in its possession. The Trailer Interchange Report states that the lessee of the container:

> "3.6: Shall have complete control and supervision of such trailer while in its possession; and the Lessor shall have no right to control the detail of the work of any employee or agent operating or using said trailer during such time. Any person operating, in possession of, or using said trailer after the signing of said receipt and inspection report and until such form is signed returning the trailer to the Lessor is not the agent or the employee of the Lessor for any purpose whatsoever."

In addition to the control outlined in the Trailer Interchange Report, Marty's is a signatory of the Uniform Equipment Interchange Agreement. This agreement includes the same provision on the trucker's complete control over the container as is contained in the Trailer Interchange Report. These provisions are required by I.C.C. regulations to be included in such equipment leases.

Despite Marty's control over both the cargo and the container while in its possession, in most instances it does not choose to exercise its right to open a container without first obtaining a customer's permission. All container are sealed by the shipper. By breaking the seal the carrier accepts responsibility for deficiencies in the amount of the cargo supposedly packed in the container or for damage to the goods. Thus, most stripping and all stuffing is performed only at the customer's instruction.

The customer may also contract for the right not to have the container opened by its carrier. Under a tariff filed by Marty's Express with the I.C.C., a customer can also choose to have "exclusive possession" of a container. Although the customer pays an additional amount for this service, under the tariff neither Marty's nor any other carrier may break the seal on the container or remove its contents. The container must move intact to the ultimate consignee.

The delivery order forwarded to Marty's by its customers, broker, or freight forwarder has no effect on Marty's control of the cargo or the container. The order is merely an acknowledgment that a bill of lading has issued. The bill of lading controls Marty's contractual relationship with its customer.

Further, I sayeth not.

/s/ Dominic C. Marano
DOMINIC C. MARANO

AFFIDAVIT

STATE OF NORTH CAROLINA

COUNTY OF GASTON

I, J. S. McCallie, business address, P.O. Box 697, Cherryville, North Carolina 28021, after being duly sworn state of my own personal knowledge and belief the following.

I am employed by Carolina Freight Carriers Corporation (CFCC or Carolina) in the capacity of Director of Commerce, a position I have held since July 4, 1974. My duties include: handling motor carrier extension matters, either as an applicant or as a protestant, before the Interstate Commerce Commission and various state regulatory bodies; meeting with personnel from the traffic, operations, and sales division of Carolina to discuss the overall operations of the company and to answer queries concerning ICC and Federal Maritime Commission rules, regulations, and proceedings; personal responsibility for publishing individual tariffs for CFCC, including the company's non-vessel operating common carrier (NVOCC) tariff; and analyzing expansion alternatives (i.e., both public convenience and necessity applications before the ICC and the purchase of operating authority from existing motor carriers).

I am familiar with Carolina, its operating authority, services, facilities, equipment, and personnel. I have been admitted to practice before the Interstate Commerce Commission.

Carolina is a motor common carrier authorized to transport general commodities, subject to the usual exceptions, in accordance with its certificate of public convenience and necessity issued by the ICC in Docket MC 2253 and Subs thereto. CFCC conducts motor carrier operations primarily of a 14,756 mile network of regular routes in 22 states and the District of Columbia serving

points generally bounded by Boston, Massachusets in the Northeast, Milwaukee, Wisconsin in the Midwest, and Key West, Florida in the South. Carolina also holds various authorizations permitting irregular route and specified commodity carriage to serve all points in several of the South Central states.

Pursuant to its philosophy to provide desirable transportation services to its customers, our company established a separate NVOCC division which commenced operation in December of 1979.

Basically, an NVOCC consolidates less-than-containerload (LCL) cargo in full containers which are subsequently tendered to vessel operating common carriers (VOCC's) for ocean transportation. In conjunction with its NVOCC service, Carolina: provides motor transportation of goods overland from and to port areas; assembles and consolidates small shipments into larger containerloads, then transfers the container to a VOCC for shipment overseas; picks up the containers at the overseas port and delivers them to a terminal for breakdown and rerouting; expedites transportation of small shipments; provides regularity of service; assumes single carrier responsibility to shippers; publishes a tariff and issues bills of lading; prepares waybills, bills of lading, and manifests; collects through charges; and furnishes fast routing and tracing of shipments. An NVOCC offers to its customers all services necessary to move cargo from the consignor's establishment to the ultimate consignee's establishment.

An NVOCC operates under authority of the Federal Maritime Commission and holds itself out to provide LCL service as does a vessel operating common carrier, such as a steamship line. However, NVOCC's do not operate seagoing vessels.

I will note at this juncture that CFCC's NVOCC operations are presently restricted to the carriage of traffic between the United States and Puerto Rico. Hereafter all references to Carolina operations will relate solely to

its NVOCC service, except where our motor carrier operations are specifically identified.

As required by the FMC, our company filed a tariff with the Federal Maritime Commission covering the details of the service we offer. This tariff, approved effective December 17, 1979, is attached hereto as Appendix A.

The tariff includes various rules, regulations, and rates we are permitted to charge in conjunction with the NVOCC services CFCC offers as identified in the tariff.

On page 13 of the tariff is found a specimen of the short form through bill of lading we use to establish the agreement for carriage between Carolina, operating both as a motor common carrier and an NVOCC, and our shipper/customer. The "Terms and Conditions of Carriage" section of the tariff, pages 14 through 16, is incorporated by reference into the bill of lading forms as a part of the contract.

Our shippers/customers may be manufacturers, jobbers, distributors, warehousers, retailers, or any individual or corporation wishing to ship freight whether or not they are the beneficial owners of such goods. About 90% of our NVOCC business is for export and the rest is for import. Other than perhaps recommending our services as a consolidator to some customer, steamship lines never directly contract for our services as a consolidator/shipper. With virtually no exceptions, our customers contact us directly and request CFCC's service on either an import or export basis between the United States and Puerto Rico.

When our customer contracts for shipment of cargo from an inland point to a location in Puerto Rico our bill of lading, as shown on page 13 of the tariff (Appendix A), is used to describe the contract of shipment. Carolina is responsible under this bill of lading and our tariff to haul the cargo from the customer's establishment to our NVOCC consolidation terminal for subsequent movement to a port in the United States, thence for the movement by sea to Puerto Rico.

In the majority of cases, the shipper specifies the port through which the cargo will be exported, and in some isolated cases that decision is left to us. We perform NVOCC activities at our regular surface transportation terminals within 50 miles of the following ports: Elizabeth, New Jersey; Baltimore, Maryland; and Jacksonville, Florida. In every instance, Carolina selects the steamship line we wish to use to transport our NVOCC shipped cargo. The ocean VOCC becomes our subcontractor for the sea movement and performs only those services for which we contract in the bill of lading. A copy of a representative short form ocean bill of lading is attached hereto as Appendix B.

In all cases the cargo that we ship as an NVOCC is tendered to the ocean VOCC in an intermodal cargo container or one of CFCC's own trailers.

Our customers, virtually without exception, use our NVOCC services to ship LCL, shipments. We consolidate such cargo from several shippers into full containers or trailers at our terminal facilities in Linden, New Jersey, Elkridge, Maryland, and Jacksonville, Florida. These full containers or trailers are then shipped on an ocean vessel at a lower rate than would be paid to the VOCC for hauling the less-than-containerload of cargo, either as breakbulk or as a load consolidated at the port terminal by the steamship line. Our consolidated full containers or trailers are shipped at a VOCC rate designated "freight, all kinds." The freight, all kinds rate is offered to us by the VOCC regardless of the contractual agreements we have with anyone. We desire and intend to have our employees stuff the cargo of our customers into containers that we lease, or trailers we own, and to likewise deconsolidate those containers or trailers at our own terminals without the ocean VOCC's or the I.L.A. infringing upon these rights.

Our terminal facility hourly employees who consolidate and deconsolidate the cargo and our truck drivers are represented by various locals of the International Broth-

erhood of Teamsters union. If we could not operate our terminal facilities as NVOCC stations because of the I.L.A. rules on containers, this would prevent us from performing NVOCC service at these points.

Attached hereto as Appendix C is a chart showing the history of our NVOCC movements for the first three quarters of 1980. The column marked "CFCC TRAILERS" indicates the number of trailers owned by Carolina which, like containers, were stuffed or stripped at our U. S. terminals by Carolina employees. These trailers hold general cargo of all kinds, indistinguishable from that shipped in containers. They are stripped and stuffed by the same Teamster employees who work on the containers. These Carolina road trailers are shipped by our NVOCC division as a part of its services, in the same manner as containers. The trailers are shipped on an ocean-going vessel similar to a container ship, commonly known as a roll-on, roll-off ("RO-RO") ship. We decide, based on consolidation of equipment availability, economies of scale, volume requirements, capital investment return factors, and equipment on location needed, whether we will ship consolidated NVOCC loads in our trailers or containers. We obtain containers from ship line companies, but we own our own trailers.

It appears from our reading of the rules on containers that stripping and stuffing our own trailers would be treated in the same manner as our stripping and stuffing of containers obtained from steamship lines.

Further, I saith not.

/s/ J. S. McCallie

CAROLINA FREIGHT CARRIERS CORPORATION TARIFF FMC-F NO. 1		Orig/Rev	Page
		Original	12
		Cancels	Page
BETWEEN: CARRIER'S TERMINALS AT U.S. ATLANTIC PORTS AS DESIGNATED ON PAGE 4	AND: CARRIER'S TERMINAL IN PUERTO RICO AS DESIGNATED ON PAGE 4	Effective Date December 17, 1979	
		Correction No.	

SECTION 1 — RULES AND REGULATIONS	RULE
SHIPMENT DEFINITION Except as otherwise provided, a shipment is defined as one lot of freight received from one shipper at one point of origin, at one place, at one time, on one bill of lading, to one consignee at one point of destination.	43
SHIPPER'S LOAD AND COUNT When carrier-supplied trailers or containers are loaded by shipper or shipper's agent, carrier will accept said shipment subject to "Shipper's Load and Count" and the bill of lading shall be so clauses. Bills of lading so clauses shall be governed by the following terms to which shipper and consignee agree in advance: A. Carrier will not be held responsible either directly or indirectly for damages to cargo resulting from improper loading or mixing of articles in carrier's trailers or containers, or any discrepancy in the count of or damage to articles. B. Shipper shall be held responsible and agree to pay for any damage to or repairs of or replacement of trailer or container supplied by carrier for loading by shipper, in the event of damage to or total loss of trailer or container due to improper stowage of cargo by shipper in said trailer or container. C. Shipper agrees that no explosives, ammunition, or hazardous cargo shall be loaded into trailers or containers supplied by carrier for loading by shipper. D. Shipper shall furnish carrier with a list of contents showing a description of the goods loaded into carrier-supplied trailers or containers, together with cubic measurements and gross weight of cargo loaded by shipper. Carrier reserves the right to open and inspect the contents of the trailer or container. E. When a trailer or container loaded with goods moves subject to "Shipper's Load and Count," consignee or its agent must furnish carrier with a clean receipt prior to release of the trailer or container or contents thereof to the consignee or its agent.	44
SPLIT SHIPMENTS AND CONSOLIDATIONS When carrier, because of government regulations or for any other reason, is forced to or desires to load a shipment into more than one trailer or container, the carrier reserves that right. Also, the carrier reserves the right to effect whatever splitting or consolidation of a shipment it deems most advantageous in order to make the most efficient use of its equipment.	45
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For explanation of abbreviations, reference marks and symbols, see page 1.

SYNOPSIS OF NVOCC TRAFFIC TRANSPORTED
BY CFCC BETWEEN THE UNITED STATES
AND PUERTO RICO
JANUARY 1, 1980—SEPTEMBER 30, 1980

United States Port	Shipments	Weight (Pounds)	Containers	CFCC Trailers
Baltimore, Maryland	3,152	6,378,990	113	52
Jacksonville, Florida	4,675	13,124,862	248	88
Linden, New Jersey	718	1,083,019	32	5
Totals	8,545	20,586,871	393	145

AFFIDAVIT OF JOSEPH E. McCARTHY

April 6, 1974

JOSEPH E. MCCARTHY, being duly sworn, deposes and says:

That I reside at 8 Stony Wood Road, E. Setauket, Long Island 11733. I am currently employed by the Town of Brookhaven, Long Island, New York, as a driver for the Sanitation Department. I am currently a member of the Retired Teamsters of Local 807, having left active membership in the IBT in September, 1966.

I began my employment in the trucking industry in 1934 when I joined Hasman & Baxt as a wagon boy.

Subsequently, in approximately 1937, I became a full-time driver for Hasman & Baxt. At this time, Hasman & Baxt was a general cartage company, specializing in export/import trucking work and warehousing. At this time, all trucking, warehousing and garage personnel at Hasman & Baxt were members of Local 807, I.B.T.

My duties as a driver consisted of picking up freight at various places within the metropolitan New York area, consolidating full truck loads from such pick ups, and delivering such loads to various piers. Upon arrival at the pier, I would deliver my truckload, dropping individual lots of cargo at each port mark on the pier for which I had a shipment. During this time I always unloaded such export shipments at each port mark by myself.

Similarly, in picking up cargo, I would drive to the appropriate section on the pier and load my truck. Public loaders, paid for by Hasman & Baxt (utilizing a ticket/reimbursement system) would assist me in loading my truck. I might load from several different piers, in order to consolidate a full truck load, which I would then distribute either to other piers, to railheads, or to warehouses, including the Hasman & Baxt warehouse.

Often I would go to various locations, including railheads, piers and warehouses and pick up freight for a sailing either a few days or a few weeks away. This cargo would be dropped at the Hasman & Baxt warehouse. On subsequent days, I or other Hasman & Baxt drivers might pick up additional cargo for the same sailing. All of this cargo would be consolidated at the Hasman & Baxt warehouse. Shortly, before the sailing, I or other Hasman & Baxt drivers would load the consolidated freight into a truck and deliver it to the pier. I am personally familiar with other import-export firms that were performing similar consolidation functions during this period such as J. A. Patterson, Theodore Ficke and Amadel.

In 1940, I joined the United States Army, serving with the army until 1945. I received an Honorable Discharge.

In 1945, I resumed my employment as a truck driver with Hasman & Baxt. Shortly thereafter my primary duties changed to warehouse foreman and assistant dispatcher, although I occasionally drove a truck. My duties as dispatcher, however, resulted in my being on the piers over a third of my time in order to expedite the movement of freight on and off Hasman & Baxt vehicles.

Sometime in the late 1940's, Mr. John Baxt, President of Hasman & Baxt, told me that we were going to be moving and handling our Puerto Rican freight in a more streamlined fashion. This service would be an express operation conducted in cooperation with the Valencia Trucking Company in Puerto Rico and would be called Valencia-Baxt Express.

Shortly after World War II, some shipping lines in the Puerto Rican trade began to use 7 foot containers, also called "Dravo" boxes.

The service which we were providing was to use these containers to expedite the traditional consolidation function performed both on our trucks and at the Hasman & Baxt warehouse. For the first few sailings on the Bull Line (not more than ten) with this new service we would

consolidate shipments to "Val-Baxt", San Juan into single lots, with a single dock receipt, a single bill of lading and a single consignee and deliver the lot to the Bull Line pier for a particular sailing. However, during this limited period, completely loaded Dravos which had been packed at the Hasman & Baxt warehouse were delivered directly to the Alcoa Lines pier for shipment because Alcoa had equipment available which could be used to lift loaded boxes off our trucks.

On northbound shipments via Bull Lines, during this same period (1949), we would send a driver and a helper, plus such additional men as needed to the piers to unload the contents from the Dravo boxes onto Hasman & Baxt trucks when equipment was not available to lift the loaded boxes onto our trucks. For this process, drivers would hire public loaders to assist him and/or his helpers and pay them with tickets which Hasman & Baxt would redeem later for cash.

Not later than 1949 all of the steamship companies obtained the necessary equipment for hoisting containers directly from the pier onto Hasman & Baxt flatbed trucks. To the best of my knowledge, the Alcoa Line was the first company to have such hoist equipment available. Subsequently, but not later than 1949, the Bull Line also had such hoist equipment.

By 1950, Hasman & Baxt was using flatbed trucks, flatbed trailer trucks and rack body trucks to pick up and deliver containers to the piers. The rack trucks were used only to transport 7 foot containers. The flatbed trucks were used to transport either two Dravo (7 foot) containers or a single 16 foot container. 16 foot containers were, to the best of my recollection, introduced in not later than 1950 or 1951 by the Bull Lines. The flatbed trailer truck was capable of transporting 2 16 foot containers or 3 or 4 7 foot containers.

The containers were hoisted directly aboard the trucks by pier personnel without breaking the seal. The container was then transported by Hasman & Baxt trucks

to the Hasman & Baxt warehouse. The containers were shipped on a single bill of lading to a single consignee which was Valencia-Baxt in either New York or San Juan.

Upon arrival at the warehouse, the contents of the container would be unloaded by platform personnel and stored in the warehouse pending delivery by other trucks to Valencia-Baxt Express customers. On some occasions, the contents would be reloaded immediately onto Hasman & Baxt delivery trucks with no storage involved.

On southbound shipments, individual lots would be picked up by Hasman & Baxt trucks or deliveries would be received by Hasman & Baxt, at its warehouse, from outside truckmen and the freight consolidated, at its warehouse, into full container loads. These loaded containers would then be driven to the pier for a particular sailing. Normally, we would immediately load emptied northbound containers with pick-ups or freight received on that or previous days and immediately dispatch the loaded container to the pier.

Our competitor for this consolidation of north and southbound Puerto Rican freight was Puerto Rican Express, Inc. The drivers and warehousemen for Puerto Rican Express were represented by Local 807, I.B.T.

Pick-ups from our customers frequently included so-called "straight loads." Such loads would involve shipments by a single customer of Valencia-Baxt Express which would completely fill a container. Examples of customers frequently shipping straight loads via Valencia-Baxt during the 1950's were: Playtex, IBM, Bargaintown Stores, Burnel Hankerchief Co. and Lowengart Co. On occasion, we would consolidate full container loads for a single ultimate recipient or consignee although there may have been several parties shipping through Valencia-Baxt Express to the single recipient. Similarly, single shippers might ship a consolidated load through Valencia-Baxt to a series of ultimate recipients. Valencia-Baxt would make door-to-door deliveries (through Valencia-Express) to these recipients in Puerto Rico.

These procedures and practices continued until sometime in 1957 or 1958. At that time, Sealand (then called Pan Atlantic, I believe) introduced 35 foot trailers. These trailers had detachable chassis provided by the steamship company. As a result, we only needed to provide a tractor which would hook into the trailer at the pier or warehouse and pull it to its destination.

During this period (1958-1962) Valencia-Baxt owned no trucks or tractors of its own. It used the trucks and tractors of Hasman & Baxt exclusively. All Hasman & Baxt trucks were clearly marked as Hasman & Baxt trucks.

During the 28 year period I worked with both Hasman & Baxt and Valencia-Baxt Express (through February 23, 1962) at no time was I aware of any demand by the ILA or anyone else which might interfere with the consolidation work which was performed by Hasman & Baxt or Valencia-Baxt Express or with the off-pier use of containers by consolidators. I never heard of any claim made by the ILA that they had the right to load our containers or in any way rehandle them at the pier.

I have no knowledge that, from the 1940's until February 23, 1962, any container consolidated by Valencia-Baxt was ever "stripped and stuffed" by ILA deepsea labor or anyone else. I believe that if such "stripping and stuffing" had occurred, I would have known about it because I would have received information from San Juan that the shipment had been rehandled or would have noticed personally (on northbound shipments) the effects of such rehandling. Also, believe that if there had ever really been any dispute with the ILA I believe ILA members would have refused to let us pick up or deliver our containers at the piers. At no time during the period from the late 1940's until 1962 did we ever fail to obtain containers because of ILA demands; ILA members and clerks never refused to receive our containers; and to the best of my knowledge, no restrictions in the handling of our containers existed.

Sometime during December, 1961 Hasman & Baxt sold its warehousing and trucking business to the U. S. Trucking Corp. Thereafter, U. S. Trucking provided Valencia-Baxt with the drivers and platform personnel previously provided by Hasman & Baxt. The personnel employed by U. S. Trucking to perform services for Valencia-Baxt Express were essentially the same personnel who had been employed for the same purposes by Hasman & Baxt. They continued their affiliation with Local 807, I.B.T. The other personnel who had worked the Valencia-Baxt operation prior to the sale of Hasman & Baxt continued to fill the same position after the sale of Hasman & Baxt trucking operation to U.S. Trucking. These persons included Roy Jacobs and Harry Goldstein.

I left U. S. Trucking later, on February 23, 1962. I have never since that time had any financial or employment relationship with Valencia-Baxt or Consolidated Express.

I have read the above 6 page affidavit and do solemnly swear that it is true to my knowledge and belief.

(Sworn to by Joseph E. McCarthy, April 6, 1974.)

AFFIDAVIT

COMMONWEALTH OF VIRGINIA

CITY OF VIRGINIA BEACH

I, Robert W. McCleskey, 1665 Lake Christopher Drive, Virginia Beach, Virginia 23464, after having been duly sworn state of my own personal knowledge and belief state the following.

I am and have been District Manager of the truck terminal owned and operated by Carolina Freight Carriers Corporation located at 5729 Bayside Road, Virginia Beach, Virginia 23455, from 1970 to the present, except for the period of March 1976 to October 1979 when I was Terminal Manager of the Greensboro, North Carolina terminal. The Virginia Beach terminal is within 50 miles of the Port of Hampton Roads. Carolina Freight has operated from a terminal in the Hampton Roads port area since at least 1969. Prior to that, we had a local cartage company which acted as our agent in the port area.

Carolina Freight operates from approximately 92 terminal facilities throughout the eastern, midwestern, and southeastern portions of the United States. A copy of our primary service points map is attached as Appendix A.

Carolina Freight is considered a long-haul freight company operating in interstate commerce. We do not operate intrastate in the State of Virginia or in most other states. Nor do we operate in Virginia in any local cartage capacity; we make no pickups in the local area for delivery in the local area.

Our Virginia Beach terminal freight dock hourly employees and local drivers are represented by Teamster's Union Local 822. The union agreement covers general freight drivers, drivers' helpers, dock workers, checkers, and other similar jobs. The scope of jurisdiction of this

contract unit is 75 miles from the zero point in the terminal city. Local drivers are, by contract, not permitted to perform long-haul road work, except in very limited situations. We have no long-haul drivers headquartered in our facility. They are covered by the National Master Freight agreement and various conference riders.

Any freight we pick up in the port area, from the sea terminal or other locations, must be brought to our terminal by local drivers. Whether the freight is transferred to another truck at the terminal or the trailer is simply hauled out of the area, there must be an exchange of local for long-haul drivers before the freight can move from our terminal. A reverse procedure is followed for freight hauled from outside the state to the port area.

Our freight terminal consists of a small office area which houses management, clerks, and dispatchers. A freight dock is attached, the floor of which is the height of a tractor trailer truck bed. We have 20 doors at our dock which is 7,750 square feet in size. A photograph of the loading dock area and some of the doors is attached as Appendix B. Attached as Appendix C is a photograph of a power driven fork lift truck, various hand trucks and carts, and freight waiting to be shipped. Appendix D is a photograph showing two of our employees loading some freight into a truck.

We warehouse no freight at our facility. Virtually all freight coming to our terminal is dispatched from our terminal within 12-24 hours.

In the year 1979, we handled freight imported through the seaport terminals in Hampton Roads of approximately 4,000 metric tons. We handled freight to be exported in the amount of 2,000 metric tons. Total import/export freight handled last year was in the vicinity of 6,000 metric tons.

In 1979 we hauled 146 containers from the seaports. Ninety percent of these containers were hauled from the seaport filled with import cargo. The remaining 10% were hauled empty from this port to our terminal or

inland to the premises of a shipper. About one-half of these empty containers are stuffed by our employees at our terminal with full loads of a shipper's cargo to be exported. The containers are then hauled back to the ports for shipment as a full shipper's load container. We consolidated no less than full shipper's loads at our facility for export.

At least 90% of the containers we handled were 40-foot containers; the balance were 20-foot containers.

We stripped at our terminal 28 of the outbound containers. All of the cargo from these containers was transferred to Carolina Freight road equipment and hauled in interstate commerce outside of Virginia. We estimated that the containers averaged 30,000 pounds of cargo each. This means that approximately 1,987 metric tons were handled in the 146 containers; and 382 metric tons were stripped from the 28 containers. The total percentage of cargo hauled in containers was approximately 20% of the total general cargo we handled in 1979.

Our customers for inbound container traffic are either consignees who are receiving the container shipment or Customs House brokers who are acting as agents for the consignees. For import shipments the consignee directs the shipper to send the cargo to a particular seaport and notify a particular broker or agent when it arrives. The broker or other agent then selects Carolina Freight or some other trucking company, or the consignee specifies the motor carrier to pick the container up and haul it to his premises.

The containerized cargo is shipped pursuant to a certain tariff rate. It is my understanding that a full container load of cargo is shipped across the ocean at a lower rate for container movement than the same cargo would cost if shipped in break-bulk form not containerized. Therefore, since the shipper has paid a container shipping rate, covering the movement from his establishment to that of the consignee, the rate does not change whether or not we strip the container at our facility.

Our responsibility is to pick up the cargo at the port in the container and deliver the cargo to the consignee. Once we have picked the container up from the pier, and signed a container interchange agreement with the steamship line, the cargo in the container and the container itself are totally within our responsibility and control.

At the time we pick up the container at the pier, we enter into a bill of lading contract with the consignor, through his agent, wherein we agree to deliver the cargo according to the terms of the agreement and be responsible for shortages and damages while in our possession. A copy of a typical straight bill of lading agreement which makes us responsible for the movement while the cargo is in our possession is attached as Appendix E.

If the I.L.A. rules on containers were enforced and we were prohibited from stripping any containers at our facility, it would have an adverse impact on our business in the following ways. Certain container loads are stripped because their cargo is going to an out-of-state destination where we must haul other general cargo. By combining the containerized freight and the other non-containerized freight into our own road equipment which has approximately 400 to 700 additional cubic feet of capacity over a 40-foot container, we can deliver it in one trip. If we could not combine such loads, many would become cost prohibitive. Also, if we have to haul a container to a particular location where we believe it would be difficult to secure a return shipment, we either have to haul a container back empty or let it remain unused until a return freight load could be secured. Thus, we would lose money by paying excessive per diem container charges. By hauling that cargo from our terminal in our own equipment our equipment can be taken thereafter anywhere in our system for efficient use. Load capacity and cost factors dictate when we will strip containers at our facility. When we strip cargo from containers, we

handle it in the same manner at our dock as we do other kinds of cargo.

Some containers we do not strip, for these reasons, because they are loaded with specially packed cargo or especially valuable cargo which prudence dictates we do not physically handle despite the other economic considerations.

If we were not permitted to freely strip containers when we felt it was in our best interest, this would cost us revenue and customers. However, other containers which we could ordinarily strip we would simply haul unstripped to the consignee. Where this happened, neither we nor the I.L.A. would strip the container.

Further, I saith not.

/s/ Robert W. McCleskey
ROBERT W. MCCLESKEY

AFFIDAVIT

COMMONWEALTH OF VIRGINIA

CITY OF CHESAPEAKE

I, Allie S. McNeil, after first being duly cautioned and sworn state the following of my own personal knowledge and belief.

I am Vice President of D. D. Jones Transfer and Warehouse Company, Inc. ("Company" or "D. D. Jones"). I have been employed in this capacity for approximately twelve years. In my capacity as Vice President I negotiate all sales contracts and participate in the overall management of the Company. I previously served as Sales Manager. I have been employed by the Company for approximately twenty-five years.

D. D. Jones was formed in 1928. The Company is engaged in the business of local drayage and general warehousing of freight. The Company has operating authority in the commercial zones of Norfolk, Chesapeake, and Portsmouth, Virginia. It also has operating authority in Virginia, North Carolina and South Carolina for the carriage of household items. D. D. Jones also operates the ramp for the piggyback operations of Norfolk and Western Railroad at its Atlantic Avenue, Chesapeake, Virginia yard and of Seaboard Coast Line Railroad at its South Street, Portsmouth, Virginia yard, and the piggyback services offered by the railroad provides for movement on railroad flat cars of intermodal containers or motor carrier trailers.

D. D. Jones' current facilities consist of approximately one million total square feet of distribution warehouse facilities at four separate locations. The facility at 1920 Campostella Road, Chesapeake, Virginia has about 210,000 square feet, the facility at 1960 Diamond Hill Road, Chesapeake, Virginia, approximately 266,000 square feet, the facility at 2626 Indian River Road,

Chesapeake, Virginia, approximately 335,000 square feet and the facility at 630-22nd Street, Chesapeake, Virginia, approximately 200,000 square feet. These facilities are pictured in the photographs attached hereto as Exhibits A-D.

As these photos indicate, each facility consists of a large building with many covered loading docks. Ceiling heights are twenty-five feet or more. The inside of the warehouse consists of a large storage area with markings on the floor designating various cargo storage areas. The warehouses utilize a "trigger system." A one-eighth inch cut is made in the floor of the warehouse to provide a "track" passing various storage stations. A wire is inserted in this track to which a power unit is attached. The power unit can be operated by remote control to move cargo to the designated stations in the storage area. Photos of the warehouse and the tugger system are attached as Exhibit E. In addition to the tugger system, the Company uses blades, roll and squeeze clamp fork lifts, conveyors, pallets and pallet racks to store and distribute customers' cargo. The conveyors and tugger system are coordinated to ensure swift location and discharge of stored merchandise.

The Company employs a total of one hundred ninety-four hourly non-clerical employees to run its operations. These employees drive, load, and unload truck trailers and containers, segregate and label cargo, palletize and stack cargo and other warehouse functions. Although they were previously represented by Teamsters Local 822, the union was decertified in 1977. The Company has never differentiated between drivers on the basis of "over-the-road" or "city." Any driver could transport any load.

Although the amount of cargo handled at our facilities has vastly increased, our basic warehouse services have remained the same. As did the Company after 1965, prior to the advent of the modern (8′ X 8′ X 20′ X 40′) container in 1965, D. D. Jones offered intrastate long

haul, local cartage and warehousing services to its customers. The warehousing service we offer has never and could not be offered by the pier terminal operators or sea carriers. Cargo brought to our warehouse is broken down beyond crates or cases of cargo to individual pieces of merchandise. We have broken down crates of shoes, sweat suits and various items of clothing and have packed, wrapped and delivered individual items. Such cargo is kept in our facility anywhere from one day to one year before being released according to our customers' instructions. It is not subject to the higher incidence of pilferage and damage which historically has characterized pier storage. The cargo may be quickly retrieved and loaded onto trucks without the delays attendant to on-pier pickup and deliveries.

Prior to containerization the procedure for handling import freight was as follows. The Company would generally be notified by its customer, the shipper or consignee, that cargo would be coming to the port in the near future. The Company ordinarily would receive in advance of the cargo a "packing list" indicating the cargo to be picked up. An example of such a list is attached as Exhibit F. Upon arrival of the cargo the shipper or its agent, a broker or freight forwarder, would forward to the Company a delivery order and/or a bill of lading, attached as Exhibits G and H, respectively. The bill of lading is the Company's contract of carriage with its customer. Its execution is required by the I.C.C. The delivery order merely directs the steamship company performing the ocean carriage to release the cargo to D. D. Jones.

On receiving notice of the cargo's arrival, a Company dispatcher would direct a driver to pick up the cargo. D. D. Jones stations some of its drivers at the pier for this purpose. The dispatcher might also contact a driver by two-way radio. The driver would report to the guardshack at the terminal gate to obtain a pass before entering the terminal.

Once inside the terminal the driver would report to the terminal's delivery clerk. The driver would present the bill of lading and/or the delivery order covering the cargo, and the clerk would prepare a delivery receipt. A delivery receipt is attached as Exhibit I. The clerk would direct the driver to the location of the cargo in the terminal. The cargo might be located in an open area on the pier or in a covered storage area.

After finding the cargo, the driver would contact a "checker" who would direct ILA laborers to load the truck trailer. The driver would oversee this loading to ensure that the load was balanced so as to meet highway weight requirements.

After the truck was loaded the driver would sign the delivery receipt evidencing receipt of the cargo indicated on that document. The driver would then proceed to a D. D. Jones warehouse. At the warehouse, D. D. Jones would prepare a freight bill. An example of a freight bill is attached as Exhibit J. This bill would be forwarded to the customer.

Depending on the type of service selected by the customer, D. D. Jones would handle the cargo in various ways. If the load did not fill a conventional trailer and was to be delivered immediately to a non-local consignee, it would be consolidated with cargo destined to the same area as the consignee and delivered. Similarly, if the goods of multiple consignees located in different non-local geographical areas were picked up at the pier, this cargo would be unloaded at the terminal and reconsolidated into trucks with cargo destined for the same geographic area. Local deliveries were usually made without rehandling of the cargo at the D. D. Jones warehouses. Cargo to be warehoused would also be unloaded from the truck. The cargo would be stored and segregated, labeled, palletized and placed in a designated storage area. As indicated, for certain customers, D. D. Jones would break open some crates of cargo for subsequent delivery of individual pieces of merchandise.

D. D. Jones also handled export cargo prior to use of the modern container. Export cargo would either be picked up by D. D. Jones at the shipper's facility, delivered to D. D. Jones in one shipment for carriage to the pier, or delivered to D. D. Jones in several small lots for storage and later consolidation into a shipment under one bill of lading. The process of taking export cargo to the pier was the reverse of that followed by the trucker picking up import cargo. If D. D. Jones picked up the export cargo at the shipper's place of business, the bill of lading would be made out at that time. The freight bill would generally be made at D. D. Jones' facility prior to delivery of the cargo to the pier. The checker at the pier would sign the bill as an acknowledgment of the delivery of the cargo.

Modern containers began appearing in the port of Norfolk around 1965. Initially they were hauled on regular, non specialized ships and barges. Smaller containers, called conex boxes, had for many years been handled in Virginia. These containers were treated as single pieces of cargo. D. D. Jones would simply haul them to its facility on a flatbed truck or van. It would there strip the box of its cargo and perform whatever service on the cargo its customer had selected.

Containerization did not change the nature of the services offered by D. D. Jones. A pamphlet attached as Exhibit K indicates the services offered by the Company after containerization. Because forty-foot containers hold approximately twenty percent less cargo than modern forty-five foot high cube truck trailers, containers destined to non-local consignees were handled the same as similar sized break bulk shipments. Containers to be delivered to non-local consignees would be unloaded and the cargo consolidated into D. D. Jones' trailers with other consignees' cargo destined to the same geographic area. Local deliveries could be made without stripping for economic reasons. Thus, after D. D. Jones phased out its long haul service in 1970, such transfers of cargo from

container to truck were not made for delivery within the local area.

Nor did the container materially affect the physical operation of our export consolidation or import deconsolidation service. Our warehouse employees loaded and unloaded cargo from and to the container in the same manner as they had handled break bulk cargo hauled in a truck trailer. We used the same equipment, such as various types of fork lifts, a conveyor system, pallets, etc.

Containerization did change the volume of work we handled. Containerization increased the speed with which import cargo could be retrieved from the pier. Instead of remaining on the pier three to five days like break bulk cargo, containerized cargo could be moved on and off the pier in one day. Because the cargo was not exposed at the pier, less damage and pilferage was possible. Containerization made it feasible to ship types of commodities through the Hampton Roads port which were never shipped through here in break bulk days. The container transportation system has resulted in a new mix of commodities being handled on the pier.

One new service which D. D. Jones began performing around the same time as modern containers appeared in the port was the operation of the ramps for the piggyback operations of the Norfolk and Western and the Seaboard Coast Line Railroads. Truck trailers loaded with cargo and stacked "piggyback" would be transported by railroad car to the yards in Norfolk. D. D. Jones would remove these trailers from the railroad cars. Some of these trailers would be transported to D. D. Jones' warehouse or to the consignee by D. D. Jones' drivers. The Company also consolidated various shipments of cargo in its warehouses and packs this cargo into trailers to be carried on the piggyback operation. Its operations are the same as with break bulk and containerized cargo.

One of our warehouses is a bonded U.S. Customs Department Warehouse. Containers may remain sealed and pass through the port without Customs inspection directly

to our bonded warehouse. The container remains sealed until a Customs inspector arrives to break the seal and inspect the contents of the container. Prior to containerization, break bulk cargo moving on an "in-transit manifest" could be inspected at our warehouse.

The process for handling import and export cargo at the pier is very similar to what happens with break bulk cargo. Because a container is removed from the pier, however, D. D. Jones' drivers must haul the containers through a maintenance and repair line and an interchange station line. At both of these locations the container is inspected for any damage. At the interchange station a Trailer Interchange Receipt and Inspection Report is completed. An example of this report is attached as Exhibit L. It takes the driver from one to three hours to pass through these two lines. Since I.L.A. labor has historically loaded break bulk cargo in our trucks with only supervision by our employees, containerization saved D. D. Jones no additional loading and unloading costs. For movement of cargo from the seaport terminal into our warehouse, both before and after containerization, our driver simply pulled a loaded trailer from the terminal to our warehouse, where our employees unloaded the cargo. The amount of containerized cargo hauled, as well as the number of containers stripped and stuffed, is indicated in the chart attached as Exhibit M.

Enforcement of the Rules in the early 1970's adversely affected our operation. Because the I.L.A. felt that the stripping and stuffing of containers at our facilities violated the Rules, it instructed the steamship lines not to release containers which we had been ordered by our customers to pick up. I.L.A. labor would strip the containers at the pier, and the terminal operators would charge our customers for this unwanted handling. The extra fee was not part of our customer's agreement with the sea carrier to transport the cargo. D. D. Jones picked up the formerly containerized cargo in break bulk form and

brought it to its warehouse where it was treated in our normal fashion.

The I.L.A.'s action caused many of our customers to cease using us as their port area agent and distribution center. Our customers simply had other trucking companies haul the containers to other facilities beyond the fifty-mile limit. Enforcement of the Rules on Containers did not provide additional stripping and stuffing work to the I.L.A. It simply forced business out of the Hampton Roads port or at least beyond the fifty-mile limit.

The service performed by D. D. Jones is directed by its customer. D. D. Jones is told what cargo to pick up or deliver, what containers to strip and what cargo to store. D. D. Jones cannot impose on its customer charges for unrequested services. Thus prior to 1970 when D. D. Jones chose for convenience to strip a container designated to a non-local consignee, its customer was not charged for this service. D. D. Jones' contract with its customer consists of the bill of lading. This contract provides:

> No carrier is bound to transport said property by any particular schedule, train, vehicle or vessel, or in any particular market or otherwise than with reasonable dispatch. (Exhibit G).

Execution of a bill of lading is required by the I.C.C. It gives D. D. Jones complete control over the cargo in its possession. Likewise, the Trailer Interchange Receipt and Safety Inspection Report provides that the carrier:

> shall have complete control and supervision of such trailer, and such trailer shall be operated under its common carrier responsibility to the public and to public authority while in its possession: and [Neptune Orient Lines] shall have no right to control the detail of the work of any employee or agent operating or using said trailer during such time. (Exhibit L).

Under this agreement with the sea carriers, D. D. Jones retains complete control over the containers.

In addition to the Trailer Interchange Receipt and Inspection Report, D. D. Jones is a signatory to the Uniform Intermodal Interchange Agreement. Section 4.1(a) of this Agreement states:

> User shall have the right of complete control and supervision of equipment while in its possession and shall be responsible for returning the equipment in the same condition as received, ordinary wear and tear excepted.

Thus by the terms of these contracts, D. D. Jones retains complete control of the cargo and the container. Sea carriers have no right to control what D. D. Jones does with the containers at its warehouses. Its actions are controlled by its customers' instructions.

Further I sayeth not.

/s/ Allie S. McNeil
ALLIE S. MCNEIL

AFFIDAVIT

STATE OF NEW JERSEY)
) SS:
COUNTY OF ESSEX)

I, Allis S. McNeil, after first having been sworn, state to my own personal knowledge and behalf the following.

1. I am Vice President of D. D. Jones Transfer and Warehouse Company, Inc., 630 Twenty-Second Street, Chesapeake, Virginia 23324, (804) 545-7374, a position I have held for fifteen years. I am also President of Tidewater Motor Truck Association, an association of motor common carriers operating in the Hampton Roads, Virginia port area. All of the motor carriers which are members of this association are, like D. D. Jones, involved in stuffing and stripping containers at their off-pier facilities in Hampton Roads port area, and hauling containers either locally or long-haul inland. Some of these motor carriers, like D. D. Jones, are also involved in warehousing cargo for their customers at their off-pier facilities, and in providing distribution services for import cargo. D. D. Jones has traditionally consolidated and deconsolidated both full shipper's load (FSL) and less-than-containerload (LCL) containerized cargo at its four Chesapeake, Virginia warehouse locations and hauled containers between its six warehouses and the various seaport terminals in the Port of Hampton Roads, in addition to performing other cargo handling and warehouse services for its customers, including hand sorting, individual packaging, and inventory control. D. D. Jones has provided these warehouse services continuously since 1928, and has provided container consolidation and deconsolidation services continuously since 1965, prior to the implementation of the ILA's Rules On Containers.

2. Effective January 2, 1981, all vessel operating common carriers (VOCCs) began enforcing the Rules On Containers in the Port of Hampton Roads pursuant to an

agreement concluded between the ILA and the Hampton Roads Shipping Association, among other parties, on or about December 6, 1980 in Miami Beach, Florida. Pursuant to this Miami Beach Agreement, all of the VOCCs in the Port of Hampton Roads with which D. D. Jones deals have refused to release import containers to us, unless D. D. Jones will agree to warehouse all containerized import cargo for a minimum of thirty days before releasing it to its consignees and agree to indemnify the VOCCs for any fines levied against them by the ILA under the Rules On Containers. D. D. Jones has refused to agree to warehouse all import cargo for a minimum of thirty days, since this would violate its customers' delivery instructions in most cases and would deprive D. D. Jones' customers of the right to obtain their import cargo at the time of their choosing. D. D. Jones has also refused to agree to indemnify VOCCs for fines levied under the Rules On Containers. As a result, the only import containers which have been released to D. D. Jones by VOCCs since January 2, 1981 are those for which the shipper or his agent has agreed to warehouse the cargo for at least thirty days after the container is stripped.

3. Since January 2, 1981, the VOCCs have not released empty containers to D. D. Jones at the pier for stuffing at D. D. Jones' warehouses. The VOCCs have told some motor carriers and warehousemen in the Hampton Roads Port area not to stuff containers which were released to them prior to January 2, 1981, and to return these export containers to the seaport terminals empty. All export cargo containterized or scheduled to be containerized by non-ILA labor at off-pier facilities within fifty miles of the piers in the Port of Hampton Roads has been brought to a standstill, since the VOCCs will not release any containers for stuffing off-pier within fifty miles of the pier by non-ILA labor and have refused to accept for shipment many containers which were stuffed by non-ILA labor at off-pier facilities within fifty miles of the pier, even though the VOCCs released those containers to

motor carriers, consolidators, and NVOCCs for that purpose prior to January 2, 1981.

4. Prior to January 1, 1981, one of D. D. Jones' customers booked space for an entire shipment of forty-two 40 foot export containers aboard a United Arab Lines vessel scheduled to leave the Port Of Hampton Roads for the Middle East in January, 1981. D. D. Jones picked up twelve of these forty-two containers at the seaport terminal and hauled them to one of our warehouses to load appliances for shipment to the Middle East. These applicances must be containerized at our warehouse, and cannot be containerized on the pier, in order to fully utilize the capacity of a container; to assure proper loading by our specially trained employees; and because air bags and special crates which we construct are required for proper loading of these appliances to prevent them from shifting in the container during shipment and being damaged as a result. Because these twelve containers had been released to us prior to January 2, 1981, when the VOCCs and the ILA began enforcing the Rules On Containers, United Arab Lines' agent, Kerr Steamship Agency, accepted these containers from us for shipment aboard, United Arab Lines' vessel. However, on or about January 5, 1981, Kerr Steamship Agency told us that United Arab Lines would not release to us the thirty additional containers which had also been booked prior to January 1, 1981 for this forty-two container shipment. As a result, our customer's shipment was split and he has been unable to honor his delivery commitments to his consignees in the Middle East. Our customer has also requested us to load an additional fifty-two containers with his appliances for export, but the VOCCs have refused to release these containers to us as well. As a result, D. D. Jones has been unable to export eighty-two container loads for this single customer since January 2, 1981. On January 9, 1981, this customer contacted us and demanded that we find a way to export his appliances as soon as possible. His representative told us that

"we won't work with people in the future who won't work with us now." The enforcement of the Rules On Containers to deny us access to any export containers into which to load our customer's appliances at our off-pier facilities where these appliances are warehoused could result in our loss of his business entirely. Since this customer is D. D. Jones' single largest export client, the interruption in our service caused by enforcement of the Rules On Containers and the risk that we may lose this account if we are unable to obtain containers immediately will cause substantial and irreparable injury to our business, including our income and our business reputation.

5. The enforcement of the ILA's Rules On Containers has also created an impossible cargo handling situation at the seaport terminals in the Port Of Hampton Roads. For example, Dart Orient Services, Inc., a VOCC, refused on January 7, 1981 to accept for shipment aboard one of its vessels, S/S Dart Europe, a container obtained from Dart by D. D. Jones at Norfolk International Terminal, stuffed by D. D. Jones with its customer's perishable chemical products, and returned by D. D. Jones to Norfolk International Terminal for shipment by Dart. When Dart refused to accept this stuffed container at the seaport terminal, our customer's freight forwarder, Norton & Ellis, arranged for another VOCC, United States Lines, to accept the container at Norfolk International Terminal on January 8, 1981 and ship it aboard one of its vessels after the container had been stripped and restuffed by ILA labor on the pier. However, this chemical product is unstable at low temperatures and must be protected from freezing at thirty-two degrees Fahrenheit. On January 9, 1981, I contacted United States Lines by telephone to determine whether this VOCC had facilities available at Norfolk Industrial Terminal to store this container, strip it, and restuff it without exposing its contents to freezing temperatures, and whether the temperature of this cargo had been protected by the VOCC at the seaport terminal since United States Lines accepted the container on January 8, 1981. I learned from an agent of United States Lines that no facilities were available to protect this cargo from freezing while the container sat on the pier, or during stripping and restuffing by ILA labor, and that no precautions had been taken to protect the temperature of the cargo. Since this container was delivered to the seaport terminal, outdoor temperatures have been constantly below thirty-two degress Fahenheit in the Hampton Roads port area, and it is probable that our customer's chemicals have already been ruined because of the VOCC's inability to handle them and store them properly on the pier. Copies of delivery orders identifying this transaction and noting the perishable nature of our customer's chemical products are attached hereto collectively as Exhibit "A".

6. Our Company cannot continue to do business without containers being supplied by the VOCCs who sublease containers for cargo transport in the Port of Hampton Roads. We cannot service our shipping customers without using these containers, and any interruption of our service by the VOCCs will lead to the irrevocable loss of business for us which we cannot recover from our customers or by money damages, in addition to the loss of cargo as the result of improper handling and storage on the pier. In consequence, our business will suffer an irrevocable loss.

7. Further I sayeth not.

/s/ Allie S. McNeil
ALLIE S. MCNEIL

Transfer and Warehouse Company, Inc.
Chesapeake, Virginia 23324 phone 804 545-7374

S 39842

DATE 1/07/81 ccs 5

ORDER ON WAREHOUSE

NORTON & ELLIS & DART LINES
NORFOLK, VIRGINIA
EASTMAN CHEMICAL INTERNATIONAL A.G.
C-O NMT INDUSTRIAL STORAGE
CORONATION ROAD, BRITTANIA WAY
LONDON, NW10, ENGLAND
S/S DART EUROPE 1/11/81
BOOKING #FENFS076

A/C OF TENNESSEE EASTMAN & DD JONES WHSE. #2
BROKER NORTON & ELLIS
EXPORT ORDER NO D38040
REF. # OR SHIPPER'S W56-8004
REP. REF. NO TWX 25 1-5
CUSTOMER'S ORDER NO: AC REQ 1-5

A ~~657~~

ROUTE: DD JONES | PREPAID | COLLECT: X

DESCRIPTION OF MATERIALS | WEIGHT

DRUMS EASTMAN WD WATER DISPERSIBLE POLYESTER (WD 3652 SIZE) 276# EACH 30,360#
PROTECT FROM FREEZING
PRODUCT FREEZES AT 32°F.

VESSEL: S/S DART EUROPE 1/11/81
BOOKING #FENFS076
PORT OF DISCHARGE: SOUTHAMPTON
DELIVER TO NIT BY 1/09/81.

CONTAINER#________________

SEAL#________________

MARKINGS:
D-38040
UK PORT
NOS. 1/
MADE IN UNITED STATES OF AMERICA
USE NO HOOKS

NOTIFY:
LEWIS HAWKINS & CO., LTD.
FOCAL HOUSE
12-18 STATION PARADE
BARKING, ESSEX, 1G11 8DJ
ENGLAND

BILL CHARGES TO:
EASTMAN CHEMICAL PRODUCTS, PO BOX 431, KINGSPORT, TENNESSEE 37662

CHECKED FOR DELIVERY: ___ P.M. DATE ___
STARTED UNLOADING OR DROPPED: ___ A.M. P.M. DATE ___
COMPLETED UNLOADING RELEASED: ___ A.M. P.M. DATE ___
DRIVER ___

Received in Good Order Except As Noted:
CUSTOMER'S SIGNATURE ___ DATE ___

CONTROL COPY

NORTON & ELLIS & DART LINES
NORFOLK, VIRGINIA
EASTMAN CHEMICAL INTERNATIONAL A.G.
C NMT INDUSTRIAL STORAGE
CORONATION ROAD, BRITTANIA WAY
LONDON, NW10, ENGLAND

SHIPPER – ORIGIN
EASTMAN CHEMICAL PRODUCTS, INC.
& DD JONES WHSE. #3
CHESAPEAKE, VIRGINIA

EXPORT ORDER NO: D38040
REP. REF. NO: TWX 25 1-5

CUSTOMER ORDER NO.: AC REQ 1-5
WAREHOUSE RELEASE NO.: W56-8004

B/L NO.: E- 58822
B/L DATE: 1/07/81 ccs

FREIGHT CHARGES:
FREIGHT PREPAID: except when box at right is checked ☐ Check box if charges are to be collect

SUBMIT BILL FOR FREIGHT CHARGES TO:
EASTMAN CHEMICAL PRODUCTS, INC.
P. O. BOX 431
KINGSPORT, TN 37662

ORIGIN CARRIER & ROUTING: DD JONES
CONTAINER#
SEAL#

ATTENTION – FIELD TRAFFIC

NUMBER PIECES	TYPE PACKAGE	HM	DESCRIPTION OF ARTICLES, SPECIAL MARKS, EXCEPTIONS	WEIGHT	CLASS OR RATE	FREIGHT CHARGES
110	DRUMS		EASTMAN WD WATER DISPERSIBLE POLYESTER WD SIZE 3652 (276# EACH)	30,360#		
			PROTECT FROM FREEZING PRODUCT FREEZES AT 32°F.			
			MARKINGS: D-38040 UK PORT NOS. 1/ MADE IN UNITED STATES OF AMERICA USE NO HOOKS			
			VESSEL: S/S DART EUROPE 1/11/81 BOOKING #FENFS076 PORT OF DISCHARGE: SOUTHAMPTON DELIVER TO NIT BY 1/09/81.			
			NOTIFY: LEWIS HAWKINS & CO., LTD. FOCAL HOUSE 12-18 STATION PARADE BARKING, ESSEX 1G11 8DJ ENGLAND			
			C.O.D. AMOUNT →			

FOR HELP IN CHEMICAL EMERGENCIES INVOLVING SPILL, LEAK, FIRE OR EXPOSURE, CALL TOLL-FREE 800-424-9300 DAY OR NIGHT.

SHIPPER: EASTMAN CHEMICAL PRODUCTS, INC.
CARRIER
PER

BEST AVAILABLE COPY

AFFIDAVIT

COMMONWEALTH OF VIRGINIA

CITY OF CHESAPEAKE

I, Donald D. Moore, 2704 Horseshoe Drive, Chesapeake, Virginia 23322, after first having been duly sworn, state of my own personal knowledge and belief the following.

I have been Terminal Manager of the Overnite Transportation Company facility located at 2053 S. Military Highway, Chesapeake, Virginia 23320, for about one year. I have been employed by Overnite for about fifteen years. Prior to my present job, I was Terminal Manager at Bluefield, West Virginia for about two years and Assistant Terminal Manager in Cincinnati, Ohio for two years.

Overnite is a nonunion company. Overnite is a long haul, general cargo commerce carrier operating under the authority of the Interstate Commerce Act. Generally, we operate betwen cities in interstate commerce. In Virginia, Overnite performs no intrastate carriage from Norfolk to other points within the State, with the exception of import and export cargo. We pick up cargo at the establishment of manufacturers and other shippers within the Norfolk and surrounding area for interstate shipment. We also deliver cargo to similar local establishments originating out of the State of Virginia. We perform no local cartage service, which requires picking a cargo up from one business establishment and delivering it to another business establishment within the area. However, we pick up cargo in containers and noncontainerized break-bulk cargo from seaport terminals in the Hampton Road area; and we deliver such cargo to inland areas outside the 50 mile radius.

Our freight terminal has been in active operation at this address since 1957. We began operating in the Norfolk area in 1955. Our present freight terminal consists of a two-story office building which houses clerical workers, dispatchers, and management. Our freight dock is attached to the back of the building. The dock floor is elevated from the parking lot to the height of a tractor trailer truck bed. The dock has a roof on it. It is approximately forty feet wide by 260 feet long. It has twenty-four, ten foot wide doors along each side. Trailer trucks and containers are backed up to these doors for loading and unloading.

Attached as Appendix A is a photograph taken this date from the middle of the freight dock looking away from the office building. Boxes of cargo are shown sitting on a wooden pallet on the bottom right hand of the picture. Other boxes of cargo are sitting on a wheeled, hand propelled dolly in the left hand side in the sunlight. Atached as Appendix B is a photograph taken from one of the freight dock doors looking away from the dock. To the right a motor tractor is hooked to a cargo container resting on its chassis. The trailer to the left of the picture is a road trailer. Both the container and trailer are forty feet long.

We haul power driven lift trucks and wheeled dollys to help move cargo at the terminals. Approximately 75% of the general cargo we handle must be handled by hand during some phase of the loading and unloading at our terminal. This method of cargo handling has been used at our terminal for many years, since at least World War II. We warehouse no cargo at our terminal. Of the cargo coming to our terminal, 98% is shipped out within twenty-four hours. The balance remains at our terminal until it is convenient or economical to deliver.

The advent of containerization in this area in about 1967 did not cause any basic changes in the methods we use to handle freight at our terminal, in the freight handling equipment at the terminal, or in the physical construction of the dock.

Our method of doing business with customers and the general public has remained basically unchanged since we began business. We contract to haul freight with any

type of business or person who wants our services, including; manufacturers, freight forwarders, brokers, consolidators and steamship companies, and the general public.

All domestic freight originating in the United States for delivery outside the State of Virginia is ordered picked up by our customer through his call to our dispatchers' office. If he wishes to ship part of a load of cargo to an out-of-state location, we will pick it up at his establishment, bring it to our terminal, consolidate other freight with it in order to fill up the trailer, and haul it out of state. The reverse process is followed for freight hauled into the area. If a customer wants to ship a full trailer load of freight, it will likewise be picked up and brought to our terminal before delivery in the area.

All cargo hauled by Overnite must come to the terminal because local pick up and deliveries are made by a group of local drivers, and the over-the-road hauling is performed by long haul drivers.

Our delivery services are charged at rates incorporated into tariffs submitted for approval and approved by the Interstate Commerce Commission. We have different tariffs for different types of services.

Each piece of cargo we carry must be covered by a bill of lading. Bills of lading are required by the Interstate Commerce Act. A typical bill of lading is attached hereto as Appendix C. We are required to fill out the bill of lading, although frequently the shipper has already made out our bill of lading by the time we pick up the cargo. If there is no bill of lading made up by the shipper, the driver must make out a bill of lading before he leaves the shipper's premises.

The bill of lading constitutes a non-negotiable agreement between the shipper and our company for the services required. All the terms of the agreement are stated on the bill of lading. A copy of the completed agreement is left with the shipper, and a copy is returned to our office. The bill of lading is signed by our driver on behalf of Overnite and by the shipper or his agent.

When the outbound cargo reaches our terminal, we transfer the information from the bill of lading agreement to a waybill. Appendix D. By law, this waybill is required to accompany the freight to its destination. The designated receiver of the freight is required to check it against the amount shown on the waybill and check for damage. He must sign the waybill acknowledging delivery or damage or shortage.

While in our possession, the cargo is our responsibility, totally. Unless otherwise specified in the bill of lading, there is no contractual limitation on our right to use whatever equipment or transportation process we desire to use to deliver the cargo. However, it might be specified, for example, that we use a refrigerated trailer.

The way we handle imported containers is as follows. Generally, a customs house broker would send to us, usually by messenger, a bill of lading he has made out covering the ground transportation of a container held at a seaport terminal. Appendix E. We would send a truck to the pier with a container delivery order form prepared by the customs house broker. Appendix F. The order form would be given to someone in charge of dispatching the containers at the port terminal, who would then release the container to our driver. A cargo release form would be issued to our driver. Appendix F. He would haul the container back to our terminal pursuant to the authority of the bill of lading agreement. This same bill of lading would also cover the movement of the cargo from our terminal to the point of ultimate destination. A copy of the customs house bill of lading is attached as Appendix G.

When we pick up a container, it is covered by an interchange agreement our company has negotiated with the steamship company. A typical agreement is attached as Appendix H.

When we deliver a container to the port terminal company, it is covered by the bill of lading issued by the original shipper. Whoever receives the container signs off on

the manifest. At that time, our responsibility for the container and its contents ends.

Generally, freight forwarders and custom house brokers make the decision to select us to haul containers or noncontainerized freight to the consignee or other receiver. In any case, the steamship line companies never specify who will haul cargo, containerized or otherwise, to or from the piers. They are not responsible for and are not in the business of arranging for land movement of cargo.

We do not have records prior to 1979 from which to calculate the amount and classes of cargo we handled to and from the seaport terminals. However, in 1979, we hauled from all Hampton Roads Ports 789,370 metric tons (2,204 lbs. per metric ton) of general cargo. We hauled 1,031 containers from the port, including 20′ and 40′ containers. We believe these containers carried an average of 38,000 lbs. per container, for a total estimated amount in containers of 17,771 metric tons. Of these containers 320 were stripped at Norfolk terminal and the cargo was reloaded into Overnite equipment for transportation beyond Virginia. None of this cargo was delivered to any location within 50 miles of the port. Almost all of the containers stripped were 20′ containers. We stripped about 31% of all the containers we hauled from the piers in 1979.

In 1979, 1647 containers of cargo were hauled by us from beyond 50 miles of the port to various sea terminals. These containers were filled in the agrigate with an estimated 28,389 metric tons of cargo. None of these containers were of the 20′ variety. Overnite did not stuff these containers with any cargo, to my knowledge.

Also, in 1979, we hauled 616 containers, all 40 footers to the piers, which were in essience empty containers we were returning to the port: These were containers which we had hauled to our terminal from out of state containing freight Overnite had stuffed in them for shipment to our Norfolk terminal. There it was deconsolidated and distributed to consignees in the area. We then filled the

containers with general break-bulk cargo at our Norfolk terminal, so as to use the container and not have to haul it empty back to the piers. This break-bulk cargo was delivered to various places at the seaport terminal, as all other break-bulk cargo was delivered with over-the-road truck equipment. When it was empty, the container was turned in for reuse at the pier. None of these containers were shipped with the cargo we stuffed in them at our terminal by steamship lines. These 616 containers carried an estimated 10,618 metric tons of cargo to the piers, which, but for returning these empty containers, would have been carried as break-bulk cargo by over-the-road equipment. The total percentage of cargo we hauled in 1979 in containers is estimated to be around 6% of our total cargo hauled.

The I.L.A. Rules on Containers would have no effect on our operations regarding container cargo to the piers, because we stuff no cargo into containers within 50 miles, except break-bulk cargo hauled in the empty containers back to the piers which is stripped at the piers and thereafter handled by I.L.A. labor.

However, the Rules on Containers, if applied to import containers we strip at our terminal would prevent us from handling any 20′ containers. This would probably cost us the ability to handle the many 40′ containers covered by the same bills of lading, because the agents would not want to split the order up between various companies.

Import containers filled with cargo assigned to one consignee beyond the 50 mile limit would under no circumstances, I can imagine, be stripped at the pier and hauled by Overnite or any other carrier from the pier in break-bulk form to the consignee, if the Rules on Containers required such pier side stripping. The reason for this is that the shipper ships the container under a full container load tariff rate, which does not contemplate the additional charges it would cost to strip the container at the pier and forward it on in break-bulk form in road